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Laws Affecting the Rights and Liberties of the Indian People.

(FROM EARLY BRITISH RULE)

WITH AN INTRODUCTION

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INTRODUCTION.

This publication appears at an opportune moment. The constitution of India is in the crucible. A new legislature, the first born of the Reform Scheme of which Mr. Montagu and Lord Chelmsford are the joint sponsors, has held its initial meeting at Delhi and the two branches of the legislature, the Council of State and the Legislative Assembly, have been blooded in their first taste of Parliamentary education and Parliamentary procedure. The experiment augurs well for the future. Two committees have been appointed to scrutinise and report upon laws which for some years have imposed severe and to some minds unwarrantable restrictions upon the liberty of the subject. The repressive laws which have aroused bitter resentment, it is hoped, will now disappear, while the revision of the fetters imposed upon the Press of this country will either be sensibly modified or removed. A new spirit of freedom as of nationality is awake throughout the land. The first step is a call for more breathing space and the Government, it may be inferred from their approval of the nomination of the two committees, are not indisposed to answer to that call. If the investigation is to be thorough, those responsible for it will find plenty of food for thought in the leaves of this compilation. Here are gathered together much of the legislation which had evoked the major portion of the mistrust convulsing the peoples of India. I do not suppose that its Author pretends that this offering of his industry and brain is exhaustive. He has none the less collected into a handy space information from sources worthy of respect which will shed light upon the legitimate use and function of Martial law and the lamentable misuse of both in the Punjab during 1919. It fell to my lot to appear in the year 1915 in Colombo where ordinary rioters, free of all political taint, were tried summarily by drum head Courts Martial while the ordinary Municipal Courts of law were open and sitting. In every case conviction followed as a matter of course and, in every case, as I learnt afterwards, tardy reparation was made

by the cancellation of all the sentences and the remission of all the fines. I expressed at the time in a public print, I remember, my thanks to God that I lived in India where such action was, I boasted, impossible. My thanks were, it now appears, premature. Within four years I have lived to witness the Jallianwalla tragedy. Those who asserted that the General Officer, who was responsible for the massacre at Amritsar acted well within his legal rights will find cold comfort in the quotations further on culled from the declared law of England. It is time that a limit should be placed in this country on the freedom with which authority deprives unarmed citizens of their lives. Had the Hon. Mr. Srinivasa Sastri moved last month in the Legislative Assembly at Delhi instead of in the Council of State his resolution for some barrier on the indiscriminate slaughter of British subjects, he would have carried his motion in lieu of having lost it.

There is no reason to doubt but that the Committees appointed will propose drastic overhauling of much of the repressive legislation still on the statute book. They will be among the early builders of the Indian Constitution of the future. Chief among this legislation are the Press Act and the Defence of India Act. The student of Indian psychology will confess that the procedure of the Defence of India Act is responsible for much of the present distrust and discontent in this country. No government can displace ancient and well-grounded landmarks of British justice without planting the seeds of revolutionary hatred. It was less the substantial provisions of the Rowlatt Act which provoked the resentment of every educated Indian than the decision to place alleged offenders under the discretion of a government empowered to remove all aids to legitimate defence in a Court of Law. It will take time to restore the lost credit of the higher officials in India. That time will never arrive if the Viceroy does not retrace his predecessor's legislative steps. There must be no further trifling with the right of all accused persons to a fair, open and impartial trial. A trial where the prisoner is not permitted to know what the witnesses have previously deposed

to in the Magistrate's Court, nor what they propose thereafter to say, is not fair. A trial in the precincts of a jail is not open. A trial before Judges specially nominated is not impartial. Each defect is a trespass on the principles of English law : each is a mockery of morality. We have suffered for five years from a Viceroy, who was honest but weak. A new Viceroy looms upon us, who administered justice in the seat occupied by Lord Chief Justices whose memory is a part of the proud inheritance not of professional lawyers but of Great Britain herself. He will certainly be honest. Will he be strong?

It is refreshing to read and rise from the perusal of the judicial canons in which this book is so rich. They inspire one with pride in British citizenship. They detail the route-march to liberty and freedom. They stimulate the acknowledgment of responsibility as well as the assertion of independence. Their continued repudiation may cost us the country. If the day is at sometime to dawn when a United India free, educated and armed shall ask that she shall have her unfettered freedom, no Englishman who is versed in the history of England's long connection with her will resent, if he regret, the claim. But when that day comes, all Englishmen will insist that the parting shall be accompanied with mutual respect, accompanied on his side with the feeling that he and his have never stooped to stain the traditions of justice which England through long centuries has made her dearest watchword. The parting will be in that event, but the renewal of love. Else, disaster awaits all.

The constitutional history of a country with its incidents which are the milestones on the long road to self-rule and self-respect should be as much the property of the layman unversed in the law as that of trained lawyers. No citizen can know what are his rights unless he studies what the law has defined them to be. No citizen can safeguard those rights until he knows what they are. That study is fascinating and this book offers us plenty of pabulum wherewith to grasp and enforce our rights as well as to accept and discharge our responsibilities. The emancipation of man from intolerable

executive ambition was won in England only step by step and only with laborious self-sacrifice. There is no reason why India should not be spared the protracted torture which accompanied and signalised victory in England. The peoples here are capable in a signal degree to take up the task where England left it. They are hungry for that "Justice", fallen of late from her once high estate, on which Lord Reading has assured them he intends to be insistent. That will prove the panacea for most of the present political ills and establish itself as the true antidote to the destructive aspect of Non-co-operation. Relaxation from the legislative pains and penalties under which the peoples have suffered for some years must be the first instalment of the only cure which can bring us peace. No lover of India will claim for her today the capacity immediately to assume the reins of complete self-government. But every true lover will assert his sturdy belief in her capacity to work out her own salvation till she feel her feet rest on the sure foundation of equality with all the other free countries of the world.

To all who wish her well, I commend this book of reference which diagnoses the complaint under which she sickens and suggests the palliatives which shall revive her suspended respiration and restore her sane, happy and cured, to her proper position as an aspirant to a situation of independence and self control coequal with her sister nations within the ambit of Great Britain's League of Nations.

TEMPLE CHAMBERS,
Calcutta, 15th April, 1921.

EARDLEY NORTON.

PREFACE.

Quite recently on the motion of the Hon'ble Mr. V. S. Srinivasa Sastri the Government of India agreed to appoint a joint committee of members of the Council of State and of the Legislative Assembly to enquire into the existing state of the laws on the statute book conferring summary powers on the executive government in India, and report upon the advisability of their repeal, modification or retention. Instead of a joint committee two separate committees have been appointed. Before long they propose to commence their labours and their reports are expected to be of a most important character, historically and politically. A survey of India's past and present political activity may be looked for, but the Indian people should have the materials before them, with the help of which they will be enabled to follow the proceedings and appreciate the recommendations of these committees and finally to pronounce their judgement. The present publication pretends to place these materials in their hands while drawing pointed attention to the departure the Indian Government has consistently and systematically made from the spirit of the Royal messages and proclamations and from the principles upon which the rights of a British citizen are based. These latter are said to be the groundwork on which the Laws affecting the Rights and Liberties of the Indian People are modelled.

Having regard to the massacres in the Punjab under cover of Martial Law in 1919 a complete symposium of all the leading opinions on Martial Law administration has been collected here. They will at once convince the lay public how futile and indefensible was the position taken up by the Government of India under Lord Chelmsford and of the Punjab under Sir Michael O'Dwyer.



CONTENTS.

	PAGE.
The East India Company Act, 1780	1
The East India Company Act, 1793	7
Regulation X of 1804 (Bengal State Offences Regulation, otherwise known as Martial Law Regulation	10
Madras Regulation VII of 1808	73
Regulation XI of 1812 (Foreign Immigrants Regulation)	76
Regulation III of 1818 (State Prisoner's Regulation)	82
Madras Regulation II of 1819	89
Bombay Regulation XXV of 1827	95
State Prisoner's Act (XXXIV) of 1850	101
State Offences (Act XI) Act of 1857	103
State Prisoners (Act III) Act of 1858	106
The Foreigners (Act III) Act of 1864	109
Punjab Murderous Outrages (Act XXIII) Act of 1867	121
Press and Registration of Books (Act XXV) Act of 1867	127
Dramatic Performances (Act XIX) Act of 1876	143
Seditious Publications (Act III) Act of 1882	148
Indian Telegraph (Act III) Act of 1885	149
Official Secrets (Act XV) Act of 1889	150
Notification No. 2651.—I of 25th June, 1891 re publication of newspapers in Native States	159
Incitements to Murder (Act VII) Act of 1908	160
Indian Criminal Law Amendment (Act XIV) Act of 1908	165
Indian Press (Act I) Act of 1910	172
Prevention of Seditious Meetings (Act X) Act of 1911	188
Foreigners (Act III) Act of 1915	192
Defence of India (Act IV) Act of 1915	194
Foreigner's Trial by Court Martial (Act III) Act of 1916	204
Anarchical and Revolutionary Crimes (Act XI) Act of 1919, known as the Rowlatt Act	207

APPENDIX A.

	PAGE..
Queen Victoria's Letter to the Earl of Derby, Aug. 15, 1858	233
The Queen's Proclamation, 1858	233
King Edward VII's Proclamation, 1908	236
King George V's Letter to the Princes and Peoples of India, 1910	239
King George V's Announcement at Coronation Durbar at Delhi, 1911	240
The Viceroy's Announcement on behalf of the King at Delhi, 1911	242
The Announcement of August 20, 1917	244
King George V's Proclamation announcing His Majesty's Royal Assent to the Reform Act, 1919	224

APPENDIX B.

The Magna Charta, 1215	249
Petition of Right, 1628	249
Habeas Corpus Act, 1679	253
Bill of Rights, 1689	262
Act of Settlement, 1700	270

Laws Affecting the Rights and Liberties of Indian People.

THE EAST INDIA COMPANY ACT, 1780.*

* * * *

That the Governor General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal for or by reason of any act or order, or any other matter, or thing whatsoever counselled, ordered or done by them in their public capacity only, and acting as Governor General and Council.

2. And it is hereby enacted and declared, that, if any person or persons shall be impleaded in any action or process, civil or criminal, in the said Supreme Court for any act or acts done by the order of the said Governor General and Council in writing, he or they may plead the general issue, and give the said order in evidence; which said order, with proof that the act or acts done has or have been done according to the purport of the same, shall amount to a sufficient justification of the said acts, and the

The Governor General and Council of Bengal not to be subject to the Supreme Court.

Persons impleaded in the Supreme Court for acts done by order of the Governor General, &c., may plead the general issue, &c.

* 21 Geo. 3, C. 70. For this short title, see the Short Titles Act, 1896 (59 & 60 Vict., C. 14.)

defendant shall be fully justified, acquitted and discharged from all and every suit, action and process whatsoever, civil or criminal, in the said Court.

Proviso.

3. Provided always, that with respect to such order or orders of the said Governor General and Council as do or shall extend to any British subject or subjects, the said Court shall have and retain as full and competent jurisdiction as if this Act had never been made.

The Governor General, &c., to remain liable to any complaint before a competent court in this Kingdom.

4. Provided, also, that nothing herein contained shall extend or be construed to extend to discharge or acquit the said Governor General and Council, jointly or severally, or any other person or persons acting by or under their order, from any complaint, suit or process before any competent court in this Kingdom, or to give any other authority whatsoever to their acts than acts of the same nature and description had, by the laws and statutes of this Kingdom before this Act was made.

* * * *

NOTE.

Object.

1. The object of this statute was to explain and amend the Act of 1773, and "for the relief of certain persons imprisoned at Calcutta in Bengal under a judgment of the Supreme Court of Judicature, and also for indemnifying the Governor-General and Council of Bengal and all officers who have acted under their orders or authority in the undue resistance made to the process of the Supreme Court." It recited that doubts and difficulties had

arisen with regard to the provisions of the Act of Note. 1773, and the Charter which had been issued under it, and that "by reason thereof dissension hath arisen between the judges of the Supreme Court and the Governor-General and Council of Bengal and the minds of many inhabitants subject to the said Government have been disquieted with fears and apprehensions, and further mischiefs may possibly ensue from the said misunderstandings and discontents, if a seasonable and suitable remedy be not provided." And then the preamble proceeded, "whereas it is expedient that the lawful Government of Bengal, Behar, and Orissa should be supported, that the revenues thereof should be collected with certainty, and that the inhabitants should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges." (Cowell, Tagore Lectures on the Courts and Legislative Authorities in India. p. 53.) Compare also p. 52, and Mill's *History of British India*, vol. IV., p. 373 *et seq.*

The Patna cause which was an action brought in the Supreme Court by Naderah Begum against Bahadur Beg, Cazi Shadu, Mufti Barkatolla and Mufti Gholam Muckdoom is said to be directly responsible for several of the provisions of this statute. This cause was subsequently made the subject of the second article of impeachment against Impey and created as strong a feeling against him as the charge relating to Nun Coomar. (For fuller details of the Patna cause see Stephen's *Nun Coomar and Impey*, Vol. II., Ch. XII.)

The Patna Cause.

The provisions of the above sections are thus summarised by Clause 106 of the India Statutes Consolidation Bill:—"Subject to any law made by the Governor-General in Council, the order in writing of

Note.

the Governor-General in Council is in any proceeding, civil or criminal, in any High Court, for any act, a full justification of the act, except as far as the act affects any European British subject of His Majesty ; but nothing in this section excepts the Governor-General or any Member of the Council, or any person acting under their orders, from any proceedings in respect of any such act before any competent court in England."

This summary appears to be correct. The provisions of the statute were extended to the Supreme Court of Madras by Section 3 of the Government of India Act, 1800 (39 & 40, Geo. 3, Ch. 79), and to the Supreme Court of Bombay by Section 7 of the Indian Bishops and Courts Act, 1823 (4, Geo. 4, Ch. 71). The jurisdictions of the Supreme Courts, with all powers and limitations, were transferred to the High Courts by Section 11 of the Indian High Courts Act, 1861 (24 & 25 Vic. Ch. 104).

The Wahabi Case.

In the great Wahabi Case the Court observed that "as the Superintendent of the Jail at Alipore holds the prisoner (detained under Bengal Regulation III. of 1818) under the warrant in writing of the Governor-General in Council, it is clear that such order must prevail against the command of any writ which this Court has power to issue." For a general discussion of the effect of these sections, see *Ameer Khan* (1870) 6, B. L. R., p. 455 *et seq.*

Theory of Ministerial Responsibility.

It will be noticed how fundamentally divergent the principle enunciated in the statute is from the doctrine of ministerial responsibility which is rooted deep in the English constitution. In its strict sense it means the legal responsibility of every minister for every act of the crown in which he takes part.

Prof. Dicey's observations on the Theory of Ministerial Responsibility is worth reproducing here. "This responsibility," says the learned Professor, "which is a matter of law rests on the following foundations. There is not to be found in the law of England, as there is found in most foreign constitutions, an explicit statement that the acts of the monarch must always be done through a minister, and that all orders given by the Crown must, when expressed in writing, as they generally are, be countersigned by a minister. Practically, however, the rule exists."

Note.
Dicey
on the
doctrine.

"In order that an act of the Crown may be recognised as an expression of the Royal will and have any legal effect whatever, it must in general be done with the assent of, or through some minister or ministers who will be held responsible for it. For the Royal will can, speaking generally, be expressed only in one of three different ways, viz., (1) by order in Council ; (2) by order, commission, or warrant under the sign-manual ; (3) by proclamations, writs, patents, letters, or other documents under the great seal."

"An order in Council is made by the King by and with the advice of his Privy Council"; and those persons who are present at the meeting of the Council at which the order was made, bear the responsibility for what was there done. The sign-manual warrant, or other document to which the sign-manual is affixed, bears in general the counter signature of one responsible minister or of more than one ; though it is not unfrequently authenticated by some one of the seals for the use of which the Secretary of State is responsible. The great seal is affixed to a document, on the responsibility of the Chancellor,

Note.

and there may be other persons also, who, as well as the Chancellor, are made responsible for its being affixed. The result is that at least one Minister and often more must take part in, and therefore be responsible for, any act of the Crown which has any legal effect, *e.g.*, the making of a grant, the giving of an order, or the signing of a treaty."

"The Minister or servant of the Crown who thus takes part in giving expression to the Royal will is legally responsible for the act in which he is concerned, and he cannot get rid of his liability by pleading that he acted in obedience to royal orders. Now supposing that the act done is illegal, the Minister concerned in it becomes at once liable to criminal or civil proceedings in a Court of Law. In some instances, it is true, the only legal mode in which his offence could be reached may be an impeachment. But an impeachment itself is a regular though unusual mode of legal procedure before a recognised tribunal, namely, the High Court of Parliament. Impeachments indeed may, though one took place as late as 1805, be thought now obsolete, but the cause why this mode of enforcing ministerial responsibility is almost out of date is partly that Ministers are now rarely in a position where there is even a temptation to commit the sort of crimes for which impeachment is an appropriate remedy, and partly that the result aimed at by impeachment could now in many cases be better obtained by proceeding before an ordinary court. The point, however, which should never be forgotten is this; it is now well-established law that the Crown can act only through Ministers and according to certain prescribed forms which absolutely require the co-operation of some Minister, such as a Secretary of

State' or the Lord Chancellor, who thereby becomes not only morally but legally responsible for the legality of the act in which he takes part. Hence, indirectly but surely, the action of every servant of the Crown, and therefore in effect of the Crown itself, is brought under the supremacy of the law of the land. Behind Parliamentary responsibility lies legal liability, and the acts of ministers no less than the acts of subordinate officials are made subject to the rule of law."

THE EAST INDIA COMPANY ACT, 1793.*

* * * *

45. And be it further enacted, that it shall and may be lawful for the Governor General of Fort William aforesaid for the time being to issue his warrant under his hand and seal, directed to such peace officers and other persons as he shall think fit, for securing and detaining in custody any person or persons suspected of carrying on, mediately or immediately, any illicit correspondence dangerous to the peace or safety of any of the British settlements or possessions in India with any of the princes, rajahs or zemindars, or any other person or persons having authority in India, or with the commanders, governors or presidents of any factories established in the East Indies by any European power, or any correspondence

Governor General of Fort William may issue warrants for securing persons suspected of dangerous correspondence.

* 33 Geo. 3, C. 52. For the short title, see the Short Titles Act, 1896 (59 & 60 Vict., C. 14.)

contrary to the rules and orders of the said Company or of the Governor-General in Council of Fort William aforesaid;

Proceedings
to be had
where rea-
sonable
grounds
for the
charge shall
appear
against such
persons.

and, if, upon examination taken upon oath in writing of any credible witness or witnesses before the Governor General in Council of Fort William aforesaid, there shall appear reasonable grounds for the charge, the said Governor General shall be, and is hereby, authorized and empowered to commit such person or persons so suspected or accused to safe custody, and shall within a reasonable time, not exceeding five days, cause to be delivered to him or them a copy of the charge or accusation on which he or they shall have been committed;

and that the party or parties accused shall be permitted to deliver in his or their defence in writing, together with a list of such witnesses as he or they shall desire to be examined in support thereof;

and that such witnesses, and also the witness or witnesses in support of the charge, shall be examined and cross-examined on oath in the presence of the party accused, and their depositions and examinations taken down in writing;

and, if, notwithstanding such defence, there shall appear to the said Governor General in Council reasonable grounds for the charge or accusation and for continuing the confinement, the party or parties accused shall remain in

custody until he or they shall be brought to trial in India or sent to England for that purpose ;

and that all such examinations and proceedings, or attested copies thereof under the seal of the Supreme Court of Judicature at Fort William or of one of the Mayors' Courts, shall be transmitted to the said Court of Directors by the first dispatches, in order to their being produced in evidence on the trial of the parties in the event of their being sent for trial to Great Britain ;

and, in case such person or persons is or are intended to be sent to England, the said Governor General shall be, and he is hereby, required to cause such person or persons to be sent to England by the first convenient opportunity, unless such person or persons shall be disabled by illness from undertaking the voyage, in which case he or they shall be sent as soon as his or their state of health will safely admit thereof ;

and that the examinations and proceedings so transmitted as aforesaid shall be admitted and received as evidence in all courts of law, subject to any just exceptions to the competency of the said witnesses.

46. And be it further enacted, that the several Governors or Governors in Council of Fort St. George and Bombay shall have the like powers, under and subject to the same regulations and restrictions, to secure and detain persons suspected of any such illicit correspondence as aforesaid within their respective presidencies

Governors of Fort St. George and Bombay to have the like powers with respect to suspected persons as the Governor General.

and settlements, and of sending them to England for trial, as are hereby given to the said Governor General or Governor General in Council of Fort William respectively.

* * * *

Note:—It may be noted that there is no record of any case in which this Act has been put into force.

THE BENGAL STATE OFFENCES REGULATION, 1804.*

A Regulation for declaring the powers of the Governor General in Council to provide for the immediate punishment of certain offences against the State, by the sentence of courts-martial.

NOTE.

Local extent. This Regulation has been declared to apply to the whole of the Lower Provinces of Bengal and of the North-Western Provinces, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6. It has also been declared in force by the Santhal Parganas' Settlement Regulation (III of 1872), s. 3 as amended by the Santhal Parganas Laws Regulation, 1886 (III of 1886), s. 2, in the Santhal Parganas, and, by notification under s. 3 of the Scheduled Districts Act, 1874 (XIV of

* Regulation X of 1804, 14th December, 1804. For this short title, see the Repealing and Amending Act, 1897 (V of 1897).

1874); in West Jalpaiguri, Western Dooars, Hazaribagh, Lohardugga, Manbhoom, Pergunnah Dhalbhoom, Assam (except the North Lushai Hills), the scheduled portion of the Mirzapur District and Jaunsar Bawar. It has been extended, under s. 5 of the same Act, to Kumaon and Garhwal and to the North-Western Provinces Tarai. It is in force in Oudh by virtue of s. 3 (e) of the Oudh Laws Act 1876 (XVIII of 1876). It is in force in the Punjab—see the Punjab Laws Act 1872 (IV of 1872), s. 3, and Sch. I.) It has been extended to Arakan, see Regulation IX of 1874, schedule.

Compare Madras Regulation VII of 1808 *post*, There appears to be no corresponding Regulation for Bombay.

1. Whereas, during wars in which the ^{Preamble} British Government has been engaged against certain of the Native Powers of India, certain persons owing allegiance to the British Government have borne arms, in open hostility to the authority of the same, and have abetted and aided the enemy, and have committed acts of violence and outrage against the lives and properties of the subjects of the said Government;

and whereas, it may be expedient that, during the existence of any war in which the British Government in India may be engaged with any power whatever, as well as during the existence of open rebellion against the authority of the Government, in any part of the British territories, subject to the Government of the Presidency of Fort William, the Governor General in Council should declare and

establish martial law, within any part of the territories aforesaid, for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof, by the immediate punishment of persons owing allegiance to the British Government, who may be taken in arms, in open hostility to the said Government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the act of openly aiding and abetting the enemies of the British Government, within any part of the territories above specified;

the following Regulation has been enacted by the Governor General in Council, to be in force throughout the British territories immediately subject to the Government of the Presidency of Fort William, from the date of its promulgation.

Power in
time of
war to
suspend
functions
of ordinary
criminal
courts, and
establish
Martial
Law;

2. The Governor General in Council is hereby declared to be empowered to suspend, or to direct any public authority, or officer, to order the suspension of, wholly or partially, the functions of the ordinary criminal courts of judicature, within any zilla, district, city or other place, within any part of the British territories, subject to the Government of the Presidency of Fort William, and to establish martial law therein, for any period of time, while the British Government in India shall be engaged in war with any Native or other power; as well as during the existence of open

rebellion against the authority of the Government in any part of the territories aforesaid :

and also to direct the immediate trial, by courts-martial, of all persons owing allegiance to the British Government, either in consequence of their having been born, or of their being resident, within its territories, and under its protection, who shall be taken in arms, in open hostility to the British Government, or in the act of opposing by force of arms the authority of the same, or in the actual commission of any overt act of rebellion against the State, or in the act of openly aiding and abetting the enemies of the British Government, within any part of the said territories.

and to direct immediate trial by courts-martial of lieges offending against Regulation.

NOTE.

This regulation provides for the declaration of Martial Law, under very stringent circumstances, in certain areas of British India. The action of an army in the field in foreign territory must necessarily be governed by Martial Law. But the question, whether the executive has the power to declare Martial Law over any portion of territory in times of civil commotion is one fraught with grave doubts. Under the English law the Executive Government act on their own responsibility in times of emergency and trust to be indemnified by a subsequent Act of the Legislature. That would undoubtedly be the procedure followed in every case not covered by the present regulation.

The declaration of Martial Law in Amritsar, Lahore and Gujranwala in the Punjab in April 1919, has brought the whole question to the forefront of

Martial law in the Panjab, 1919.

Note.

acute legal controversy and been the subject matter of bitter political feeling both in India and England. The matter appears to be still *sub judice* by the executive authorities, though the better opinion seems to be that where the courts are open, Martial Law cannot be executed. (*Exparte Marais*, 1902 A. C. 109.) For a detailed discussion of the entire subject of Martial Law see Mayne's *Criminal Law of India*, pp. 334—344 and Gour's *Penal Law of India*, vol. I, pp. 274—277. Mayne's opinion should be read in connection with Lecky's *History of England* vol. VII, pp. 285, 294, 299—310 and the *Annual Register* for the years 1797 and 1798 where the facts relating to the Irish Rebellion have been fully described.

Professor Dicey, perhaps the greatest living authority on Constitutional Law, has a most lucid chapter on Martial Law (Ch. VIII.) in his work the "Law of the Constitution." He defines "Martial Law" as "a name for the common law right of the Crown and its servants to repel force by force in the case of invasion, insurrection, riot, or generally of any violent resistance to the law."

In this connection it will be interesting to note the opinion of Attorney-General, Sir John S. Copley, on the authority of the military to take away life in suppressing a riot in the Island of Barbadoes early in the last century.

LINCOLN'S INN, Jan. 18, 1824.

Martial
law in the
Barbadoes.

My Lord,—I have had the honour to receive your lordship's letter dated the 6th instant transmitting to me therewith a letter from Governor Sir Henry Warde, dated Barbadoes, the 4th of November last, together with a memorial from the Council of that Island requesting the opinion of the

law officers of the Crown upon the question there- Note.
 in stated, viz., "whether there is any statute passed
 before the settlement of that Island in the year 1625,
 which authorizes the military, acting under the
 magistrate for the suppression of a riot, to take the
 life of rioters ; if such a measure should be necessary
 and, if not, is such a proceeding sanctioned by the
 common law of England?

Your lordship also enclosed dispatches from the
 Governor, reporting the occurrences which had
 lately taken place in the Island, and which had given
 rise to the present application. And your lordship
 was pleased to state that you had received his
 Majesty's commands to desire that I would take the
 papers into consideration, and report to your Lord-
 ship as speedily as possible, for his Majesty's
 information, what instructions it might in my opinion
 be proper to transmit to the Governor upon the case
 stated.

In obedience to the commands of his Majesty,
 I have taken the papers as speedily as possible into
 my consideration, and beg leave to report to your
 lordship that there is no statute passed before the
 settlement of the Island of Barbadoes in the year
 1620, and now in force, of the nature above alluded
 to ; but by common law the military may effectively
 act under the direction of the civil power in the
 suppression of riots. The late Chief Justice
 Mansfield, in the case of *Burdett vs. Abbot*, in the
 Exchequer Chamber (4 Taunt. Rep., p. 449), in
 speaking upon this subject observes that a "strange
 mistaken notion had got abroad that because men
 were soldiers they ceased to be citizens. A soldier,
 he adds, is gifted with all the rights of other citizens,
 and is bound to all the duties of other citizens, and

Note.

he is as much bound to prevent a breach of the peace or felony as any other citizen. This notion is the more extraordinary because formerly the *posse Comitatus*, which was the strength to prevent felonies, must in a great proportion have consisted of military tenants who held lands by the tenure of military service. If it is necessary for the purpose of preventing mischief or for the execution of the law, it is not only the right of soldiers, but it is their duty, to exert themselves in assisting the execution of a legal process, or to prevent any crime or mischief being committed. It is therefore highly important that the mistake should be corrected which supposes that an Englishman by taking upon himself the additional character of a soldier, puts off any of the rights and duties of an Englishman. A soldier when called upon and required to aid the civil magistrate in apprehending or opposing persons engaged in a riot, will be justified in using the force necessary for that purpose ; any excess will be illegal, and for such excess the soldiers as well as the mere citizen will be responsible. In this respect the law as applicable to both classes is the same. If, in executing the commands of the magistrate, opposition is made by the rioters, force may be opposed to force ; but the same rule still applies, viz., that the extent of the force used must be regulated by the necessity of the occasion. The excess only is illegal. If the military, in obeying the lawful commands of the magistrate, be so assailed that resistance cannot effectually be made without sacrificing the lives of the rioters, they would in law be justified in so doing. It is obvious, therefore, that each case must depend on its own circumstances, and the only rule that can be given is that the force, to

be legal and justifiable must in every instance, as ^{Note.} far as the infirmity of human passion will admit, be governed by what the necessity of the particular occasion may require.

I beg leave to suggest that it will be proper to direct the Governor to take especial care that a magistrate be present when the military are called upon for the purpose of suppressing a riot, and that they act in his aid and under his command.

Temper and coolness upon such occasions, and forbearance as far as it can be exercised consistently with the public safety cannot be too strongly recommended.

J. S. COPLEY.

TO EARL BATHURST, etc., etc.

*Opinion of the Attorney and Solicitor General,
Henley and Yorke.*

TO THE RIGHT HON'BLE THE LORDS COMMISSIONERS
FOR TRADE AND PLANTATIONS,
May it please your Lordships;—

In pursuance of your lordships' commands, signi- ^{Martial}
fied to us by Mr. Pownell in his letter of the 22nd ^{law in}
instant, acquainting us that your lordships have ^{Jamaica.}
received two letters from Henry Moore Esq.,
Lieutenant-Governor of Jamaica, informing your
lordships that he had, in consequence of advices
which he had received of an intended invasion of
that island, caused Martial Law to be proclaimed;
and that His Majesty's Council, upon being sym-
moned to meet in their legislative capacity, had
refused to do any business, alleging that neither they
nor the assembly had any right to sit or transact
business after the publication of Martial Law; and
also transmitting to us copies of the Lieutenant-
Governor's letters and two other papers, containing

Note.

the reasons assigned by the Council for their opinion, and their answers to several questions propounded to them by the Lieutenant-Governor, and desiring us to take the same into our consideration and report to your lordships our opinion thereon : we have taken the same into our consideration, and are of opinion that there is no foundation for the notion of the Council that the proclaiming of Martial Law suspends the execution of the legislative authority which may, and ought to continue to act as long as the public exigencies require.

Nor do we apprehend that by such proclamation of Martial Law the ordinary course of law and justice is suspended or stopped any further than is absolutely necessary to answer the then military service of the public and the exigencies of the province.

ROBT. HENLEY.

C. YORKE.

Jan. 28, 1757.

* But a study of the history of the administration of Martial Law in various parts of the British Empire cannot be without interest at the present moment when so many things have been done in the Punjab in the name of Martial Law. The most important question is as to what degree of provocation, and danger to the life and property of peaceful citizens, justifies the use of extreme force which may cause fatal consequences. Let us take a few instances of riots in India and England which were suppressed by military intervention.

* I am indebted to the *Leader* of Allahabad which of all Indian or Anglo-Indian papers has recently dealt with most exhaustively and sensibly the entire question of the Martial Law for the whole of this account.

On the 16th of April, 1816, the introduction of ^{Note.} Chowkidaree tax in Bareilly led to a general rising in which, says a chronicler who had been a Deputy Judge Advocate-General of the Bengal Army for the period of fourteen years, 'some of the Nawab's satellites and all the idle vagabonds in the place' ^{Riots in India and in England.} quitted their houses and assembled in the Masjid in the old town.' Two companies with two six-pounders under Captain Boscawen, were ordered to disperse them, but 'had instructions not to fire unless the insurgents did so first.' The Captain took his station close to the mob. What happened subsequently is thus recited :—

"During the 17th the rebel party increased hourly, and became very insolent to our officers and men. Several messages passed from them to the civil power, in which they held out such threats that it was deemed necessary to send an express for the part of Captain Cunningham's horse stationed at Moradabad. On the 18th, the insurgents were joined by several thousands of matchlocks and swordsmen from Rampoor, Pilibheet and the Nawab's (Nawab of Oudh) provinces. Captain Boscawen's party consisted only of 270 men of his own corps and about 120 of the provincial battalion. An express was therefore sent for 1st battalion 13th N. I. and another for more troops from Fattehgarh. On the 20th, the rebels were joined by about 1,500 Pathans armed with swords from Pilibheet. They threatened to attack the troops ; made the dispute appear a religious one ; planted four green standards, and posted strong pickets within ten yards of our men, and told them it was ridiculous to attempt to make any resistance. It was true, they said, we had two guns ; but these they would take with the loss of

Note.

fifty or sixty men. It is to be noted that the insurgents were allowed to grow in strength without being molested and that they were fully armed. 'The attacking force,' says the historian, 'amounted at least to 5,000 matchlocks, and 7,000 swordsmen, and a large body, armed with spears and clubs.' The rioters killed one Mr. Leicester and then began a general attack, surrounding Captain Boscawen's small party of 270 regulars, 60 provincials and two guns. The result of the fighting was that the insurgents suffered a sanguinary defeat, but not before the troops had twenty one killed and sixty-two wounded. A committee of inquiry was appointed by Government to investigate the causes of disturbance, and it was found that besides the tax there were other causes of dissatisfaction among the people. 'The Kotwal,' we are told 'was of an over-bearing and tyrannical disposition' and the European Magistrate, 'by reserved and uncourteous manners, had given so much offence to the most respectable of the inhabitants, that they avoided as much as possible, all private and friendly intercourse with him.'

A very interesting case of passive resistance at Benares is recited by the writer referred to above. In 1810 the Government proposed to levy a house-tax in Benares. When this became known 'great excitement prevailed throughout the city, and meetings of different castes and trades were held, to determine upon the course to be pursued.' The Magistrate thought it expedient to send for troops from the neighbouring cantonments. Their services were, however, not needed as the people quietly dispersed. They decided to mark their protest by means of passive resistance an account of which is given as follows :—

“On the same day a solemn engagement was ^{Note.} taken by all the inhabitants, to carry on no manner of work or business until the tax was repealed. The people deserted the city. Their conduct was uniformly peaceable ; passive resistance was the only ^{Hartal.} weapon to which they trusted. They continued in the open air throughout the day. This lasted from the 26th December, 1810 to 8th January, 1811. Two petitions were prepared and a large body of people were preparing to march to Calcutta, to present the second in person to the Governor-General. The Raja of Benares counselled them to rest content with sending it through the official channel, and to return to their homes. They did so. Owing to the unpopularity of the tax it was repealed.’

Terrible riots took place in London in June 1780. The provoking cause was an Act of Parliament. They began on June 2, and continued up to the 8th. On the 7th June the scenes were very dreadful. The *Annual Register* gave the following graphic account of the scene :—

‘It is impossible to give any adequate description of the events. Towards the close of the day, the inhabitants beheld, at the same instant, the flames ascending and rolling in clouds from the King’s Bench and fleet prisons, from New Bridewell, from the toll-gates on Blackfriars Bridge, from houses in every quarter of the town, and particularly from the bottom of Holborn where the conflagration was horrible beyond description. The tremendous roar of the authors of these horrible scenes heard at one instant, and at the next the dreadful reports of soldiers’ muskets, firing on platoons and from different quarters ; in short, everything served to

Note.

impress the mind with ideas of universal anarchy and approaching desolation.'

By the 8th of June order was restored and 'the 'only uneasiness felt', says the chronicler, 'was that the metropolis was subjected to martial law'. The following hand-bill was thereupon circulated in every quarter of the town:—

Martial
Law or
ordinary
law.

'Whereas, etc., it has been rumoured that it is intended to try the prisoners now in custody by "martial law", notice is given by authority that no such purpose or intention has ever been in the contemplation of Government; but that the said prisoners will be tried by the "due course of law," as expeditiously as may be.' It is remarked by the *Annual Register* that 'for six days successively from the 2nd to the 8th June, the cities of London and Westminster were delivered up into the hands of an unarmed and nameless "mob" to be plundered at its discretion.' This riot was thus from all accounts a serious affair. There was no proclamation of martial law, and the ordinary law was allowed to take its course.

The incidents connected with the riots at the election for the county of Clare, in Ireland, in 1852, furnish some interesting points as to the circumstances in which the military can be held to be justified in using deadly force. The facts were that on the 22nd July, 1852, a certain number of voters had to be escorted by a military force to the polling place for the protection of these voters and that while so engaged, the soldiers were attacked by an infuriated mob. One soldier was disabled for life, and others were wounded. A conflict took place between the rioters and the military and several of the former were killed. An Irish newspaper charged the men

of the 31st regiment with deliberate murder and threw Note.
 out insinuation against the character of the regiment
 as consisting of 'disgraceful cowards'. The paper
 was sent to Mr. Napier, the attorney-general for
 Ireland by the Duke of Wellington, and Mr. Napier
 examined two military officers who were in com-
 mand. The defence of one of these, Captain Eggar,
 was that 'the soldiers fired in defence of their own
 lives and of the voters entrusted to their charge ;
 and that such firing did not take place until the
 soldiers felt that their lives, and those of the said
 voters, were in imminent peril from the attacks of
 the said mob, and that if such firing had not taken
 place, many of the military party would have been
 killed, and others disabled, whereupon the mob
 would have gained possession of their arms'.
 Lieutenant Hutton's statement was that the people
 "without any provocation whatsoever" commenced
 throwing stones which was continued without inter-
 mission, the people at the same time pressing at
 the rear of the party.' He saw several of the
 soldiers lying on the ground. His soldiers begged
 him to order them to fire. They said: "They will
 have our lives, sir, and 'are we to allow ourselves to
 be murdered?" But he refused to give the order
 for firing, because it appeared to him that the firing
 which had taken place at the front, had intimidated
 the people. Mr. Whiteside, the solicitor-general for
 Ireland, urged in defence of Captain Eggar that 'he
 did everything to 'avoid a conflict with the crowd'
 and that at the place of encounter he (Mr. Whiteside)
 'saw stones enough along the ground to destroy any
 one of His Majesty's regiments'. The number of
 persons who were killed was 7 or 8 only. A
 coroner's inquest sat on the case, and the jury

Note. brought in a verdict of 'wilful murder' against the soldiers.

The cases, specially the English ones, show that firing on the mob in riots can be justified only in extreme cases, when the greatest provocation has been offered by it. The military should exercise thorough self-restraint and should not by its action provoke the mob.

Regulation
X.

Regulation X of 1804, empowers the Governor-General of India to establish Martial Law in territories subject to his control in the event of prevalence of circumstances indicated in the Regulation itself. The following circular issued by the then Governor-General of India (the Marquis of Wellesley) to all magistrates of the ceded and conquered provinces under date the 11th April, 1805, is of special importance in the consideration of the right of the Government to declare Martial Law over any area.

Wellesley
circular.

"You have already been furnished with Regulation 10, of 1804, which provides for the eventual establishment of Martial Law under the circumstances therein described, within any part of the British territories subject to the immediate authority of this Government. I am now commanded by His Excellency the Most Noble the Governor General in Council to communicate to you the following special orders for the regulation of your conduct in the event of its being considered to be necessary, or proper, to proclaim Martial Law in the district under your authority. Whenever Martial Law shall be proclaimed, you will direct all officers in command of troops, which shall be employed within your jurisdiction, to act under the proclamation, until it shall be recalled ; leaving it to the discretion of such officers to confine the operation of the proclamation

to the principal person, or persons, concerned in any Note.
of the acts of rebellion described in the regulation,
or to extend it to their principal adherents and
followers, as the exigency of the case may require.
If any person or persons, charged with any of the
overt acts of rebellion specified in Regulation 10, of
1804, shall be apprehended by any military officer,
when not in the actual commission of offences of
that description, they are to be delivered over by the
military to the civil power ; and you are required to
commit such persons to close custody ; and to adopt
the necessary measures for bringing them to trial on
a charge of high treason. In cases of such commit-
ment you will communicate the circumstances, with-
out delay, to the court of circuit for the division of
Bareilly, with intimation when the trial may come
on ; in order that the court may depute two of its
members to your station for the trial of the prisoners
in virtue of powers vested in them to that effect
under Regulation 20, of 1803. You are commanded
to attach all property, whether real or personal,
which shall be situated within your jurisdiction,
belonging to any person or persons who may be
guilty of overt acts of rebellion against the authority
of Government ; and to continue such property under
attachment until the pleasure of the Governor
General in Council on the occasion shall be known.
Whenever you shall attach landed estates in virtue
of the present order, you will place the same under
the management of the collector of the district ; with
instruction to adopt the proper measures for realizing
revenues of such estates. Should the property of
the rebels be situated in any other district, you will
make the necessary communication to the judge and
magistrate of such district, requiring him at the same

Note.

time to attach the property in question, and to continue the same under attachment until he shall be furnished with the orders of Government for his further guidance in the disposal of the property. If any property, of persons charged with act of rebellion against the State, shall be attached by any military officers employed in the district under your authority, such property is to be delivered over to your charge ; whether the owners shall have been taken in arms or otherwise ; and to be retained under attachment, until you shall have received the orders of Government for its disposal. The Right Honorable the Commander-in-Chief will be requested to make these rules known to all military officers employed in the command of detachments within the limits of the ceded and conquered provinces, and to enjoin a strict adherence to them in all cases to which they may be applicable." (See Harringtons' *Analysis of the Bengal Regulations*. Edition of 1821 pages 350 and 351.)

It will be seen from a perusal of the Regulation, as well as the circular that the manifest intention of the British Government in those days was that only persons taken in the actual commission of an overt act of rebellion or taken in the act of openly aiding or abetting the enemies of the State or taken in open hostility should be tried by Courts Martial. In other words, unless the acts complained of were open overt acts, the accused were not to be brought before such courts. This was also the considered opinion of Sergeant Spankie, the Advocate-General of Bengal in those days. He wrote as follows :—

Rebellion in East Indies.

'To W. B. BAYLEY, Esq., Secretary to Govern- Note.
ment, Judicial Department, from Advocate-General
Spankie, relating to Native Detachment Courts-
Martial in Cuttack, 17th September, 1817 to 4th
March, 1918.

Sir,—I have the honour to acknowledge the Court
Martial
in Cuttack.
receipt of your letter of the 14th instant transmitting,
by direction of the Hon. the Vice-President in
Council, various documents respecting the cases of
certain prisoners, tried by Court-Martial in Cuttack
and in reply, I have to request that you will lay
before the Hon. the Vice-President in Council the
opinion I have formed upon the subject :'

'1. It appears by the document referred to, that
Martial Law was put in force under the orders of
Government by virtue of Regulation X of 1804.

'2. The preamble of the Regulation states,
"that it may be expedient, in certain cases therein
mentioned, that the Governor-General in Council
should declare and establish Martial Law for the
safety of the British possessions and etc., by the
immediate punishment of persons owing allegiance
to the British Government, who may be taken in
arms in open hostility to the said Government, or
in the actual commission of any overt act of rebellion
against the authority of the same, or in the act of
openly aiding and abetting the enemies of the
British Government within any part of the territories
above specified."

'3. This enacting part conformably to the
object developed in the preamble, enacts (See 2).
"That the Governor-General in Council shall be
empowered, among other things, to direct the

Note.

immediate trial by Court-Martial of all persons owing allegiance, and who shall be taken in arms in open hostility, to the British Government, or in the act of opposing by force of arms the authority of the same or in the actual commission of an overt act of rebellion against the state, or in the act of openly aiding and abetting the enemies of the British Government."

'4. Four overt acts are enumerated ; and it seems to me clear that the word taken in the first, must, in necessary construction, be carried forward and annexed to each member of the sentence containing the description of the overt act ; indeed, the sentence would not make sense without it.'

'5. Here the circumstances in which Courts-Martial are to have authority to try, are clearly marked and defined. The criminals must be taken in open acts of the treasonable and rebellious descriptions mentioned.

'6. It seems to me also liable to some doubt whether the fourth overt act specified in the Regulation does not mean an aiding and abetting of such enemies of the British Government as are contemplated both in the preamble and in Sec. 2 ;—enemies with which the British Government may be engaged in war, not rebels with arms in their hands.

'7. If there could be any doubt of the extent of the authority and jurisdiction of the Courts-Martial under Regulation X of 1804, it would be removed by the instructions of 11th April 1805, communicated for their guidance to the authorities in Cuttack during the late disturbances. These instructions (paragraph 4) say. "If any person or persons charged with any of the overt acts of rebellion specified in Regulation X of 1804, shall be appre-

hended by any military officer, when not in the ^{Note.} actual commission of offences of that description, they are to be delivered over by the military to the civil power."

'8. The Courts-Martial in Cuttack do not appear to have considered themselves as at all confined to the cases of prisoners taken *flagrante delicto*, or even to traitorous and rebellious acts of the specific quality stated in the Regulation. They seem to have acted as if they had possessed an unqualified jurisdiction over all treasonable and rebellious acts without limitation of time, place, or circumstance. The charge (confirming as in all limited jurisdictions, it ought to the cases in which the jurisdiction is given) does not state the circumstance of the criminals being taken in the act, or that it was in some open act of the treasonable rebellious quality which alone the Court-Martial could lawfully try.

'9. The first case is "for rebellion against that British Government by being seized with arms in the house."

'10. The court find him guilty of a breach of allegiance to the British Government. Sentence—Four years' imprisonment in the convict's gaol at Cuttack.

'11. The prisoner is acquitted of rebellion—the only part of the charge made a crime under the Regulation.

'12. The next case: '1st, Being seized with arms in his house. 2nd, Deputing four Sowars to find out whether Atchet Piddam was off his guard. 3rd, Having in his possession four orders signed by the chieftain of the rebels, addressed to various parts of the Dendmals. 4th, For preventing the well-affected inhabitants from returning to their allegiance

Note.

to British Government, by threatening them with death. 5th, Alarming the inhabitants of the Dendmals, which had just returned to a state of tranquillity, by creating and circulating false reports of its being the intention of the chieftain of the rebels (Jugbundoo Bryadhum) to attack this post with fourteen pieces of cannon and 4,000 or 5,000 men ; by which means he prevented the remaining few from returning to their allegiance.'

'13. Found guilty of the 2nd, 3rd and 4th charges, acquitted of the 5th, on "revision" guilty of the fifth (paragraph 15.)

'14. The fifth charge the same as the preceding. No "open overt" acts, as specified in the Regulation.

'15. The next case.—For having taken up arms and aided and abetted in a rebellion against the state.

'16. Found and sentenced to be hanged.

'17. Here the court who finds the prisoner guilty, or (in the words of the charge) would have been justified and bound to find him guilty of having taken up arms at any time, or having aided and abetted in any manner, which such court might have construed to be aiding and abetting at any time without the qualification of the prisoner being taken in the "actual" commission of any crime, or in any "open" act of the description specified in the Regulation.

'18. The next case. For high treason, for aiding and abetting the insurgents in this district, in one or other of the following instances :—1st, For adhering to and accompanying the insurgents in this district. 2nd, For selling a quantity of salt belonging to Government, and defrauding Government of the

same. 3rd, For collecting the money, in this neighbourhood from the cultivators for the insurgents, and for being in the capacity of a collector on the part of Jugbundoo, at the same time he was seized." Note.

'19. Guilty of first charge, acquitted, of the second charge ; on the third acquitted of collecting money from the cultivators, but guilty of the rest of the charge. "Sentence"—to be hanged.

'20. The second charge is a mere fraud. The aiding and abetting which amounted to treason and rebellion, were not well defined. Acquitted of collecting money from the cultivators, but guilty of being a collector on the part of Jugbundoo, "at the time 'he' (not distinguishing whether 'he' refers to the prisoner or Jugbundoo) was seized."

'21. It is doubtful whether this prisoner was guilty of any offence. He certainly is not charged with being taken in the "actual" commission of any offence or of the open overt act specified in the Regulation.

'22. The next case is,—"1st, For aiding, abetting or joining in a rebellion against the legal authorities of the state between the month of March, 1817, and the present period. 2nd, For joining or following the rebel chief Kurnakun Purraum Gooroo some time during the above mentioned period."

'23. Acquitted of the first ; guilty of the second charge. "Sentence"—to be hanged.

'24. Second prisoner acquitted.

'25. Third prisoner charged,—"For aiding, abetting and joining in a rebellion against the legal authorities of the state, between the month of March, 1817, and the present period."

Note.

'26. Guilty to be hanged :—(Three other cases the same.)

'27. No "taking" specified, though the court may have received evidence of what they consider aiding, abetting or joining, at any time whatsoever, from the 17th March, 1817.

'28. The last case.

'29. Charge the same.

'30. Guilty to be hanged.

'31 Same remark as to those immediately preceding.

'32. The whole of the proceedings and sentences illegal.

'33. The manifest intention of Government in its legislative capacity was, that none but cases of the simplest and most obviously criminal nature should be the subject of trial by the Courts-Martial ; the fact, whether a person was "taken" in the actual commission of an overt act of rebellion, or taken in the act of "openly" aiding and abetting the enemies of the state or taken in "open" hostility, might safely be tried by such courts ; and such a provision for trial was calculated to prevent "military" severity in the field, becoming absolute "massacre." But all complex cases depending upon circumstantial proof, and requiring either a long examination of facts, or a discriminating inference from facts in themselves equivocal were purposely "withdrawn from the cognizance of these tribunals. It never was intended that Courts-Martial should try, as those have done, acts, even of criminal nature, in which the prisoner was not "taken"; and unless the acts were "open overt" acts, and of the most material palpable quality.

'34. To guard against a dangerous usurpation

of authority, the charge should have stated that the Note. prisoner was "taken in the actual commission of some open overt act" of the description specified in the Regulation ; for without such limitation, the Court-Martial is let in to try all manner of "traitorous, treasonable," and rebellious acts, direct or indirect.

It does not appear that the distinctions required both by the regulations and by the positive instructions of Government have been at all regarded in practice.

35. Some of the cases exhibited instances of laxity in the charge, and indeed in the conception of the nature of the crime which sufficiently evidence the danger that would ensue if the courts were not to be most strictly limited, both as to the extent of their authority and the defined quality of the offence submitted to them.

"36. It is impossible, though I think it is not either morally or legally to be presumed in the present case that some of the prisoners tried may have been "taken" in the act, as required by the Regulation. But, on the face of the proceedings, the sentences are wholly "illegal", and I think that no punishment whatever can legally be inflicted upon them. Indeed, they are as utterly void, that the prisoners, if they be guilty and if it be thought advisable, might still be prosecuted before the criminal Courts of ordinary jurisdiction. The humanity of the Commander-in-Chief (1) and the military Commissioner of the District (2) has led them to "commute" all sentences by which "death" was to be inflicted ; so that if the proceedings be irregular, the consequences are not irreparable.

"37. The proceedings of those courts-martial

Note.

appear to be in some other respects irregular and seem to indicate a misapprehension of their proper functions and jurisdictions.

"38. The object of martial law in the trial of offenders under it, is justly stated in the Regulation X of 1804, to be immediate punishment, for the safety of the British possessions and for the security of the lives and property of the inhabitants thereof."

It is in fact the law of social defence superseding under the pressure, and therefore under the jurisdiction of an extreme necessity the ordinary forms of justice. Courts-martial under martial law, are invested with the power of administering that prompt and speedy justice in cases presumed to be clearly and indisputably of the highest species of guilt. The object is self-preservation by the terror and example of speedy justice but courts-martial which condemn to imprisonment and hard labour belie the necessity under which alone the jurisdiction of courts-martial can lawfully exist in civil society.

"39. I would not be understood to mean that the superior military authorities may not properly commute the punishment of death in cases in which in the first heat and danger of rebellion sentence of death has been given by a court-martial. It seems important, however, that the court-martial itself should be confined to cases of the most obvious and dangerous criminality, admitting as far as they are concerned, but of one sentence. It is essential to preserve the distinction of crimes and the character of the jurisdiction, and that the lenity of the tribunal should not become an argument for the unnecessary employment of it.

"40. In all the cases above considered there appears no reason why the criminals might not have

been sent before the ordinary courts agreeably to the Note. expressed directions and instructions of Government. It seems desirable that the attention of the military authorities should be drawn to the distinctions laid down in Regulation X and in the instructions of Government as long as the existence of Martial Law is found necessary.

“41. The proceedings and sentences of the courts-martial are illegal ; and I conceive that, as a court of law in “reviewing” the proceedings of inferior jurisdictions, sets aside the whole, where error, and particularly want of jurisdiction manifestly appear, the supreme Government exercising the same functions of “review” and control, must quash the whole of the illegal proceedings, and cannot consider them the foundation of any lawful punishment at all.

(Sd.) R. SPANKIE,

Advocate General.

Fort William, 27th April, 1818.

Case and Joint Opinion of Mr. Edward James, Q. C., and Mr. Fitzjames Stephen, Q. C.

Case submitted by the Jamaica Committee.—Court Martial in Jamaica. The Committee desires to be advised what steps are open to them to assist their fellow-subjects in Jamaica to obtain the protection of the law ; and, if the law has been broken, to bring the guilty parties to justice ; and also what steps are open to them, as Englishmen, to vindicate constitutional law and order, if constitutional law and order have been illegally set aside by the local Government in Jamaica.

With this are sent copies of the despatch from Governor Eyre to Mr. Secretary Cardwell, on the 20th of October, 1865, and also of the Address of the Governor to the Jamaica House of Legislature, at the

Note.

annual meeting which took place on the 7th of November. Copies are also sent of such reports of the military officers as have appeared in the papers.

Considering for the present nothing but these official documents, and taking for granted that the statements they contain are all true, counsel is requested to advise :

1. What is the meaning of the term "martial law", and what is the legal effect of a proclamation of martial law?

2. Are there grounds for concluding that Governor Eyre has acted illegally and criminally in the mode in which he states that he has proclaimed and enforced martial law, and especially in removing the Hon. G. W. Gordon from Kingston to Morant Bay, and there handing him over to Brigadier-General Nelson, to be tried by court-martial?

3. Could Mr. Gordon be legally convicted and punished by Court-martial for any act done prior to the proclamation of martial law, or for any act done beyond the boundaries of the proclaimed district?

4. Are officers acting in enforcing martial law exempt from all control beyond the instructions they receive from their superior officers? If not, are there any principles acknowledged by martial law, or by the British Constitution, which would render it illegal,—(a) to continue for several days shooting down men, and flogging men, women, and children, and burning their habitations, in the absence of any appearance of organized resistance ; (b) to inflict punishment without or before trial ; (c) to inflict punishment for the purpose of obtaining evidence ; (d) to inflict death for or on the evidence of looks or gestures?

5. In case Governor Eyre or his subordinate

officers have been guilty of illegal acts in the course of the late proceedings in Jamaica, what are the proper modes of bringing them to trial for such illegal acts? Note.

6. Are any, and (if any) what, proceedings for the above purpose open to private persons in this country?

7. The last question has reference to a bill of indemnity, if one should be passed by the Jamaica Legislature.

Opinion.—The questions asked in this case all depend more or less upon the general question, “What is the nature of martial law, and what power does it confer?” We will, therefore, state our view of this subject before answering the specific questions asked, and we must do so at some length, on account both of the importance and the obscurity of the subject. The expression “martial law” has been used at different times in four different senses, each of which must be carefully distinguished from the others :—

1. In very early times various systems of law co-existed in this country—as the common law, the ecclesiastical law, the law of the Court of Admiralty, &c. One of these was the law martial, exercised by the constable and marshal over troops in actual service, and especially on foreign service. As to this, see an essay on the “Laws of War”, by Professor Montague Bernard, in the “*Oxford Essays*” for 1856.

2. The existence of this system in cases of foreign service or actual warfare, appears to have led to attempts on the parts of various sovereigns to introduce the same system in times of peace on

Note.

emergencies, and especially for the punishment of breaches of the peace. This was declared to be illegal by the Petition of Right, as we shall show more fully immediately. (See Hallam's "*Constitutional History*", Vol. 1. p. 240, 7th edition, ch. v., near the beginning.)

3. When standing armies were introduced, the powers of the constable and martial fell into disuse, and the discipline of the army was provided for by annual Mutiny Acts, which provide express regulations for the purpose. These regulations form a code, which is sometimes called martial, but more properly military law. (Grant and Gould, 2H. Blackstone, 69.)

4. Although martial law in sense (1) is obsolete, being superseded by military law, and in sense (2) is declared by the Petition of Right to be illegal, the expression has survived, and has been applied (as we think, inaccurately and improperly) to a very different thing—namely, to the common-law right of the Crown and its representatives to repel force by force in the case of invasion or insurrection. We shall proceed to develop and illustrate this view of the subject.

The provisions of the Petition of Right on Martial Law (3 Car. 1, c. 1), are contained in ss. 7, 8, 9, 10. These sections recite that commissions under the Great Seal had lately been issued to certain persons to proceed in particular cases "according to justice of martial law;" and that thereby persons had been put to death who, if deserving of death, ought to have been tried in the ordinary way, whilst others, pleading privilege, had escaped. Such commissions are then declared to be illegal; and it is provided that henceforth no commissions of like

nature may issue forth to any person or persons Note.
 whatsoever. The commissions themselves explain the nature of the system which the Petition of Right prohibited. These, which were issued shortly before it passed, are given in 17 "*Rymer's Foedera*" (pp. 43,246,647.) They are dated respectively 24th November, 1617 ; 20th July, 1620 ; 30th December, 1624. The first is a commission to certain persons for the government of Wales, and the counties of Worcester, Hereford, and Shropshire. It directs them to call out the array of the county, and then proceeds to direct them to lead the array—

"As well against all and singular our enemies, as also against all and singular rebels, traitors, and other offenders and their adherents, against us, our Crowne and dignitie, within the said principalitie and dominions of North Wales and South Wales, the marches of the same, and counties and places afore-said, and with the said traitors and rebels from time to time to fight, and then to invade, resist, suppress, subdue, slay, kill, and put to execution of death, by all ways and means, from time to time by your discretion.

"And further to do, execute, and use against the said enemies, traitors, rebels, and such other like offenders and their adherents afore-mentioned, from time to time as necessities shall require, by your discretion, the law called the martial law according to the law martial, and of such offenders apprehended or being brought in subjection, to save whom you shall think good to be saved, and to slay, destroy, and put to execution of death, such and as many of them as you shall think meete, by your good discretion, to be put to death."

The second empowers Sir Robert Maunsel to

Note. govern the crews of certain ships intended for the suppression of piracy, and gives him "full powers to execute and take away their life, or any member, in form and order of martial law."

The third is a commission to the Mayor of Dover, and others, reciting that certain troops, then at Dover, were licentious, and empowering them—

"To proceed according to the justice of martial law against such soldiers with any of our lists aforesaid, and other dissolute persons joining with them, or any of them, as during such time as any of our said troops or companies of soldiers shall remain or abide there, and not be transported thence, shall, within any of the places or precincts aforesaid, at any time after the publication of this our commission, commit any robberies, felonies, mutinies, or other outrages or misdemeanors, which by the martial law should or ought to be punished with death, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such delinquents and offenders, and then cause to be executed and put to death according to the law martial, for an example of terror to others and to keep the rest in due awe and obedience."

The distinctive feature of all these commissions is, that they authorise not merely the suppression of revolts by military force, which is undoubtedly legal, but the subsequent punishment of offenders by illegal tribunals, which is the practice forbidden by the Petition of Right. In illustration of this we may compare the proceedings described in Governor Eyre's despatch with the course taken by a Lieutenant-general and his Provost marshal in the reign of Queen Elizabeth, under one of the commis-

sions declared to be illegal by the Petition of Right. Note.
 In 1569, the Earls of Northumberland and Westmoreland had risen and besieged and taken Barnard Castle, and committed other acts of open treasonable warfare. The rising took place, and was suppressed, in the course of the month of December. The Earl of Sussex received from the Queen a commission, evidently similar to the one already cited, and appointed Sir George Bower his Provost-marshal. Sir George Bower made a circuit through Durham and Yorkshire, between the 2nd and the 20th of January, 1569, and executed at various places 600 persons. (Sharpe's *"Memorials of the Rebellion,"* No. 1569, pp. 99, 113, 121, 133, 140, 143, 153, 163.)

It appears from Governor Eyre's despatch, passing by earlier portions, which contain instances of acts done by the so-called courts-martial, susceptible perhaps of a construction different from those which follows, that at daybreak on Monday, the 16th of October (paragraph 41), the last definite act of violence mentioned having taken place on the 15th (see paragraph 33), a court-martial sat to try prisoners, and twenty-seven were found guilty and hung. By the 18th (paragraph 55), many rebels had been captured, and several courts-martial had been held and capital punishment inflicted. On the 19th (paragraph 57), all was going on well in camp, more rebels had been captured or shot. Afterwards, on the 23rd of October, Mr. Gordon was hung. As Governor Eyre mentioned on acts of violence subsequent to that above referred to, it would appear that these executions were punishments for past offences, and not acts required for the suppression of open insurrection. The measures adopted thus resemble those taken by Sir George Bower, in 1569, under

Note.

the authority of the commission declared illegal by the Petition of Right. As to the legal character of such punishments, Lord Coke observes (3rd Inst., c. 7, p. 52): "If a lieutenant, or other that hath commission of martial authority in time of peace, hang, or otherwise execute any man by colour of martial law, this is murder ; for this is against *Magna Charta*, c. 29. (See too Hale, *Hist. C.L.* 34.)

These authorities appear to show that it is illegal for the Crown to resort to martial law as a special mode of punishing rebellion.

We now proceed to consider the authorities which took in the other direction. In 1799, an Act of the Irish Parliament (39 Geo. 3, c. 11) was passed, the effect of which was to put the parts of the country which were still in rebellion under military command, according to a system therein described. The preamble states that the rebellion had been already suppressed, and it sets forth that on the 24th of May, 1798, Lord Camden did, by and under the advice of the Privy Council, issue his orders to all general officers commanding his Majesty's forces, to punish all persons acting, ordering, or in any way assisting in the said rebellion, according to martial law, either by death or otherwise, as to them should seem expedient, and did by his proclamation of the same date ratify the same. It further goes on to recite, that "by the wise and salutary exercise of his Majesty's undoubted prerogative in executing martial law, for defeating and dispersing such armed and rebellious force, and in bringing divers rebels and traitors to punishment in the most speedy and summary manner, the peace of the kingdom has been so far restored as to permit the course of the common law partially to take place," &c. And in the body

of the Act (section 6) there is contained a proviso that Note.
 "nothing in this Act shall be construed to abridge or diminish the undoubted prerogative of his Majesty, for the public safety to resort to the exercise of martial law against open enemies or traitors."

It is impossible to suppose that such a declaration as this should operate as a repeal of the Petition of Right as regarded Ireland, though the language of the two Acts appears to be conflicting. As, however, it merely declares an "undoubted prerogative of the Crown," it cannot refer to what the Petition of Right expressly denied to exist, and therefore it must probably be construed to mean only that the Crown has an undoubted prerogative to attack an army of rebels by regular forces under military law, conducting themselves as armies in the field usually do. This construction is strengthened by the fact that traitors are coupled with open enemies. Now, the force used against an invading army is used for the purpose, not of punishment, but of conquest, and thus the words in the Irish Act would mean only that the Crown has an undoubted prerogative to carry on war against an army of rebels, as it would against an invading army, and to inflict upon them such punishment as might be necessary to suppress the rebellion, and to restore the peace, and to permit the common law to take effect.

As soon, however, as the actual conflict was at an end, it would be the duty of the military authorities to hand over their prisoners to the civil powers. This was affirmed by the case of Wolfe Tone, who, having been captured when the French surrendered, was sent upto Dublin Barracks, tried by a Court-martial, and sentenced to death. The Court of King's Bench immediately granted a habeas corpus and

Note.

directed the sheriff to take into custody the Provost-marshal and officers in charge, and to see that Mr. Tone was not executed (27 St. Tr. 624-5.). No doubt many military executions took place during the Irish rebellion, but an Act of Indemnity was passed in respect to them, and it must also be remembered that by the laws of war (which are a branch of morals rather than of law proper, and prevail not over soldiers, but as between contending armies), many severities may be justified, such as the refusal of quarter, and the putting to death of soldiers who surrender at discretion ; and thus, in a war like that in 1798, much might be done which might pass under the name of martial law, but which in reality would be no more than incidents of ordinary warfare conducted with unusual rigour.

Another argument is drawn from the annual Mutiny Acts. They contain a declaration that "no man can be forejudged of life or limb, or subjected to any punishment within this realm by martial law, in time of peace." This has been construed to imply that in times of war or disturbance martial law is legal. As to this, however, it must be remembered that in its original meaning, the phrase "martial law" included what we now understand by military law, and that one principal object of the commissions declared to be illegal by the Petition of Right, was the creation of military tribunals without Parliamentary authority. Hence the words "in peace", which were not in the first Mutiny Act, probably mean that standing armies and military courts were, in time of peace, illegal, except in so far as they were expressly authorised by Parliament.

The whole doctrine of martial law was discussed at great length before a committee of the House of

the Commons, which sat in the year 1849, to inquire Note.
 into certain transactions which had taken place at Ceylon. Sir David Dundas, then Judge Advocate General, explained his view upon the subject at length, and was closely examined upon it by Sir Robert Peel, Mr. Gladstone, and others. The following answers, amongst others, throw much light on the subject :—

“5437. The proclamation of martial law is a notice, to all those to whom the proclamation is addressed, that there is now another measure of law and another mode of proceeding than there was before that proclamation.”

“5459. If a Governor fairly and truly believes that the civil and military power which is with him, and such assistance as he might derive from the sound-hearted part of the Queen's subjects, is not enough to save the life of the community, and to suppress the disorder, it is his duty to suppress by this (*i.e.*, by martial law) or any other means.

“5476. (Sir Robert Peel.) A wise and courageous man, responsible for the safety of a colony, would take the law into his own hands, and make a law for the occasion rather than submit to anarchy? A.—I think that a wise and courageous man would, if necessary, make a law to his own hands, but he would much rather take a law which is already made; and I believe the law of England is, that a Governor, like the Crown, has vested in him the right, where the necessity arises, of judging of it, and being responsible for his work afterwards, so to deal with the laws as to supersede them all, and to proclaim martial law for the safety of the colony.

“5477. (In answer to Mr. Gladstone.) I say he

Note. is responsible, just as I am responsible for shooting a man on the King's highway who comes to rob me. If I mistake my man, and have not, in the opinion of the judge and jury who try me, an answer to give, I am responsible.

"5506. My notion is, that martial law is a rule of necessity, and that when it is executed by men empowered to do so, and they act honestly, rigorously, and vigorously, and with as much humanity as the case will permit, in discharge of their duty, they have done that which every good citizen is bound to do."

Martial law has, accordingly, been proclaimed in several colonies—viz., in the Cape of Good Hope, in Ceylon, in Jamaica, and in Demerara.

The views thus expressed by Sir David Dundas appear to us to be substantially correct. According to them the words "martial law," as used in the expression "proclaiming martial law," might be defined as the assumption for a certain time, by the officers of the Crown, of absolute power, exercised by military force, for the purpose of suppressing an insurrection or resisting an invasion. The "proclamation" of martial law, in this sense, would be only a notice to all whom it might concern that such a course was about to be taken. We do not think it is possible to distinguish martial law, thus described and explained, from the common-law duty which is incumbent on every man, and especially on every magistrate, to use any degree of physical force that may be required for the suppression of a violent insurrection, and which is incumbent as well on soldiers as on civilians, the soldiers retaining during such service their special military obligations. (On this subject see Lord Chief Justice Tindal's Charge

to the Grand Jury of Bristol, in 1832, quoted in 1 Note. Russ. on Cr. 286n.) Thus, for instance, we apprehend that if martial law had been proclaimed in London in 1780, such a proclamation would have made no difference whatever in the duties of the troops or the liabilities of the rioters. Without any such proclamation the troops were entitled, and bound, to destroy life and property to any extent which might be necessary to restore order. It is difficult to see what further authority they could have had, except that of punishing the offenders afterwards, and this is expressly forbidden by the Petition of Right.

We may sum up our view of martial law in general in the following propositions:—

1. Martial law is the assumption by the officers of the Crown of absolute power, exercised by military force, for the suppression of an insurrection, and the restoration of order and lawful authority.

2. The officers of the Crown are justified in any exertion of physical force, extending to the destruction of life and property to any extent, and in any manner that may be required for this purpose. They are not justified in the use of excessive or cruel means, but are liable civilly or criminally for such excess. They are not justified in inflicting punishment after resistance is suppressed, and after the ordinary courts of justice can be reopened. The principle by which their responsibility is measured is well expressed in the case of *Wright v. Fitzgerald*, 27 St. Tr. p. 65. Mons. Wright was a French master of Clonmel, who, after the suppression of the Irish rebellion, in 1798, brought an action against Mr. Fitzgerald, the sheriff of Tipperary, for having cruelly flogged him without due inquiry. Martial

Note.

law was in full force at that time, and an Act of Indemnity had been passed, to excuse all breaches of the law committed in the suppression of the rebellion. In summing up, Justice Chamberlain, with whom Lord Yelverton agreed, said :—

“The jury were not to imagine that the Legislature, by enabling magistrates to justify under the Indemnity Bill, had released them from the feelings of humanity, or permitted them wantonly to exercise power, even though it were to put down the rebellion. They expected that in all cases there should be a grave and serious examination into the conduct of the supposed criminal, and every act should show a mind intent to discover guilt, not to inflict torture. By examination or trial he did not mean that sort of examination and trial which they were now engaged in, but such examination and trial—the best of the case and existing circumstances should allow of. That this must have been the intention of the Legislature was manifest from the expression ‘magistrates and all other persons,’ which provide that as every man, whether magistrate or not, was authorized to suppress rebellion, and was to be justified by that law for his acts, it is required that he should not exceed the necessity which gave him that power, and that he should show in his justification that he had used every possible means to ascertain the guilt which he had punished ; and, above all, no deviation from the common principles of humanity should appear in his conduct.”

Mons. Wright recovered £500 damages ; and when Mr. Fitzgerald applied to the Irish Parliament for an indemnity, he could not get one.

3. The courts-martial, as they are called, by which martial law in this sense of the word is

administered, are not properly speaking, courts- Note.
 martial or courts at all. They are mere committees
 formed for the purpose of carrying into execution
 the discretionary power assumed by the Government.
 On the one hand, they are not obliged to proceed
 in the manner pointed out by the Mutiny Act and
 Articles of War. On the other hand, if they do so
 proceed, they are not protected by them as the
 members of a real court-martial might be, except in
 so far as such proceedings are evidence of good
 faith. They are justified in doing, with any forms
 and in any manner whatever is necessary to suppress
 insurrection, and to restore peace and the authority
 of the law. They are personally liable for any acts
 which they may commit in excess of that power,
 even if they act in strict accordance with the Mutiny
 Act and Articles of War.

Such, in general, we take to be the nature of
 martial law. We now proceed to examine the Act
 of the Jamaica Legislature under which Governor
 Eyre appears to have acted, as we presume,
 regularly.

The Act is 9 Vict. cap 30, and is a consolidation
 of the laws relating to militia. The sections bearing
 on the subject of martial law are as follows : Sect. 95
 constitutes a body called a council of war ; Sect. 96
 is in these words : "And whereas the appearance
 of public danger, by invasion or otherwise, may
 sometimes make the imposition of martial law
 necessary, yet, as from experience of the mischief
 and calamities attending it, it must ever be considered
 as one of the greatest of evils : Be it therefore
 enacted, that it shall not in the future be declared or
 imposed but by the opinion and advice of a council
 of war, consisting as aforesaid, and that at the end

Note.

of thirty days from the time of such martial law being declared, it shall *ipso facto* determine, unless continued by the advice of a council of war as aforesaid." Sect. 97 empowers the governor, with such advice as aforesaid, to declare particular districts to be under martial law, and to except others. Sect. 117 says that "This Act shall continue to be in force notwithstanding and during martial law".

It is a grave question whether, if this Act be considered to confer upon Governor Eyre any other power than he already possessed at common law, the Act itself would be valid. The powers of the Jamaica Legislature are derived, not from Parliament, but from Royal Commission. As the Crown cannot authorize legislation inconsistent with the law of England, it could not authorize the Jamaica Legislature to confer upon the Governor, or anyone else, powers inconsistent with the provisions of the Petition of Right. It is indeed provided by 28 & 29 Vict. c. 63, ss. 1, 2, and 3, that no colonial law shall be deemed to be void on the ground of repugnancy to the law of England, unless it is repugnant to the provisions of any Act of Parliament applicable to any such colony by express words or necessary intendment. We apprehend, however, that if the Act of the Jamaica Legislature be construed as authorizing or recognizing anything declared illegal by the Petition of Right, it is repugnant to a provision of an Act of Parliament extending by necessary intendment to the colony of Jamaica.

It appears, however, that the Act does not create any new power, but only limits the existing power, and provides regulations under which it is to be exercised. It provides that the Governor shall not proclaim martial law without the advice and

consent of a council of war, constituted in a certain way, and that when proclaimed it shall expire, *ipso facto*, in thirty days. It also provides that its operation may be limited (as in the present case it was) to certain districts. Note.

We now proceed to the consideration of the specific questions contained in the case:—

2. & 3. The legality of the conduct pursued towards Mr. Gordon depends, according to the principles stated above, on the question whether it was necessary for the suppression of open force, and the restoration of legal authority, to put him to death. We see nothing whatever in Governor Eyre's despatch which affords any ground for thinking that such could have been the case. The fact that Kingston was exempted from martial law shows conclusively, as against Governor Eyre, that in his opinion no necessity for the assumption of arbitrary power existed then and there. The fact that Mr. Gordon was in lawful custody shows that he was at all events disabled from doing further mischief, however guilty he might previously have been. It would perhaps be too much to say that no conceivable state of things could justify the treatment which he received, but no such facts are mentioned in Governor Eyre's despatch. As to the legal power of the officers sitting as a court-martial at Morant Bay, we are of opinion that they had no powers at all as a court-martial, and that they could justify the execution of Mr. Gordon only if, and in so far as they could show that, that step was immediately and unavoidably necessary for the preservation of peace and the restoration of order. They had no right whatever to punish him for treason, even if he had committed it. Their

Note. province was to suppress force by force, not to punish crime.

4. This question is answered in our introductory observations. Cases might be imagined in which some of the acts specified might be justified. In a case, for instance, where the loyal part of the population were (as in the case of the Indian Mutiny) greatly out-numbered by a rebellious population, measures of excessive severity might be absolutely essential to the restoration of the power of the law ; but this would be a case, not of punishment, but of self-preservation. No facts stated in Governor Eyre's despatch appear to us to show any sort of reason for such conduct in Jamaica.

5. They may be indicted in Middlesex under the provisions of 42 Geo. 3, c. 85. See, too, 24 & 25 Vict. c. 100, s. 9. They may also be impeached in Parliament.

6. Any person in this country may prefer a bill of indictment.

7. This is a question of great difficulty. As Governor Eyre's consent would be necessary to such an Act, and as he could not pardon himself, we are not inclined to think that such an act would be no answer to an indictment in England. Besides this, if Governor Eyre has committed any crime at all, it is a crime against the law of England. Whilst Governor, he could not be made criminally responsible in Jamaica (*Mostyn v Fabrigas*, 1 Smith's "Leading Cases," p. 543, 4th ed.) It is not competent to the Legislature of Jamaica to pardon crimes committed against the laws of England.

To obviate all difficulty, we should advise that if such an Act were passed, a petition should be presented to Her Majesty, praying her to refer to the

Judicial Committee of the Privy Council the question *Note.* whether the Act ought to be disallowed, and that the petitioners might be permitted to show cause by counsel why it should be disallowed. Unless and until they are disallowed by the Queen, the Acts of the Jamaica Legislature are valid.

EDWARD JAMES.

J. FITZJAMES STEPHEN.

Temple, January 13, 1866.

As long ago as the reign of William III., it was found necessary to pass an Act to punish Colonial Governors for crimes committed in the Colonies, by providing that they should be tried for such crimes in the Court of King's Bench, in London. But this Act was found to be not sufficiently comprehensive, and in the forty-second year of George III., its provisions were extended so as to secure that, if any person employed in the service of the Crown, in any civil or military station or capacity out of Great Britain, should commit any indictable offence in the execution of, or under color of his office, he might be prosecuted for the same in the Court of King's Bench. The words "under color of his office" are significant words, showing that the Legislature foresaw the invariable defence set up for illegal and arbitrary acts done by officials. The supremacy of the criminal law was actually vindicated, as is well-known to lawyers, against General Picton and General Wall, who were both tried in the King's Bench for cruelties committed, the one in Trinidad, and the other in Goree, and both were convicted. Much later, proceedings were begun against Governor Eyre for alleged cruelties in Jamaica, but were rendered abortive owing to the Grand Jury of Middlesex ignoring the Bill.

Note.

General Picton and General Wall were each accused of cruelty to a single individual, the defence of the latter being that he acted as he did to put down a threatened mutiny. General Eyre acted under Martial Law, and was accused of having deliberately abused his powers under that cover. Nevertheless, all the officials suffered for their acts. Governor Eyre retired into private life. General Picton was killed at Waterloo before the legal arguments connected with the special verdict found against him by the jury were decided. General Wall was hanged, although he had evaded trial for twenty years.

Indemnity
Act.

That prosecutions have not been more frequent than they have been under the Acts of William III., and George III., is probably due to the fact that arbitrary acts by officials have been often given legal protection by Acts of Indemnity passed for that very purpose ; and, as is well known, an Act of Indemnity has been passed for India this year. The legal effect of that Act will have to be settled. It is, however, not to be supposed that an Act of Indemnity will cover any arbitrary act however extravagant. The true view of its effect may be seen stated in the charge to the jury of Mr. Justice Chamberlain in the civil case of *Wright v. Fitzgerald*, a charge warmly approved of by Lord Yelverton, afterwards Lord Avonmore. The defendant, who was High Sheriff of Tipperary, was accused of brutally flogging the plaintiff during the Irish Rebellion, in the 18th century, and the defendant pleaded an Act of Indemnity. The learned judges thus dealt with his plea in their charge :—

“The Jury were not to imagine that the Legislature, by enabling magistrates to

justify under the Indemnity Bill, had re- Note.
 lieved them from the feelings of humanity,
 or permitted them wantonly to exercise
 power, even though it were to put down
 rebellion. No, it expected that in all cases
 there should be a grave and serious
 examination into the conduct of the
 supposed criminal, and every act should
 show a mind intent to discover guilt and
 not to inflict torture."

The result was that the jury gave the plaintiff a
 verdict for £500.

It may be useful to add what Lord Chief Justice
 Cockburn wrote about Acts of Indemnity in a note
 appended to the published report of his charge to the
 Grand Jury in the case against Colonel Nelson and
 Lieut. Brand, officers who took part, under Governor
 Eyre, in putting down the Jamaica riots. After
 deprecating the reckless use of Martial Law, in
 reliance upon a statutory indemnity for unwarrant-
 able acts, he said:—

"The only legitimate purpose of an Indemnity
 Act is to protect a man who, placed in
 trying circumstances, and called upon to
 exercise a doubtful and ill-defined power,
 has gone, as is very likely to happen in
 such a case, in ignorance or haste, but not
 intentionally, beyond the limits of the
 law."

The noticeable words here are "but not
 intentionally."

One more high authority may be cited. Professor
 Dicey, who, in discussing how far a soldier may plead
 the orders of his superior in committing unlawful
 acts, says this:—

Note.

“An officer orders his men to fire on a crowd whom he thinks could not be dispersed without the use of fire-arms. As a matter of fact, the amount of force which he wishes to employ is excessive, and order could be kept by the mere threat that force would be used. The order, therefore, to fire is not in itself a lawful order—that is, the colonel, or other officer who gives it is not legally justified in giving it, and will himself be held criminally responsible for the death of any person killed by the discharge of firearms.”—*Constitutional Law*, c. 7.

And he cites a passage from Mr. Justice Stephen's “History of the Criminal Law of England” on the same subject, which concludes with this sentence :—

“I think it is not less monstrous to suppose that superior orders would justify a soldier in the massacre of unoffending civilians in time of peace, or in the exercise of inhuman cruelties, such as a slaughter of women and children, during a rebellion.”

These views seem to have a bearing on what has happened in the Punjab.

Martial
Law pro-
clamations.

Martial Law was proclaimed by the British Government during the last century in.

1. Barbados—1805-1816.
2. Ceylon—1817 ; 1848.
3. Demerara—1823.
4. Jamaica—1831-1832 ; 1865.
5. Cape of Good Hope—1834 ; 1849-1851.
6. Canada—1837-1838.
7. Capalonia—1848.

8. St. Vincent—1863.
9. Cuttack—1868.
10. Maler Kotla (in the Punjab)—1872.
11. South Africa—1899-1901.

Note.

and in the present century in—

12. The Punjab—(April) 1919.

In connection with Martial Law and the errors of judgment committed under it in the Punjab it would be interesting to note the precedent which is being followed in dealing with the officers implicated in the imbroglio. It is the Maler Kotla case in which the Deputy Commissioner Mr. Cowan who was chiefly responsible for the atrocities that were perpetrated in 1872, was retired from the service with a suitable pension, and Mr. Forsyth the Commissioner of the Ludhiana Division, who approved of his subordinate's overzealous administration of martial law was transferred to an office where he could do no further mischief. The decision of the Government of India was recorded in the following letter to the Panjab Government dated the 30th April, 1872.

"2. His Excellency in Council has maturely considered the facts stated by Mr. Forsyth and Mr. Cowan, and the expressions of his Honor the Lieutenant Governor's opinion contained in your letters of the 19th January, No. 23 c. the 7th February, No. 59 c. and of the 16th February, No. 78 c. and, without recapitulating all the circumstances of the case, which will be found in the memorandum appended, he thinks it right to recall the following leading facts to your recollection as being those on which his decision proceeds.

"3. On the 17th January 49 persons, many of whom were wounded, were by Mr. Cowan's orders

Note.

blown away from guns at Maler Kotla without trial. That these persons had been guilty of a great crime there is no doubt ; but both the manner of the execution, and its excessive and indiscriminate severity, stand in need of the strongest justification. In the opinion of his Excellency in Council, nothing short of absolute necessity could justify these proceedings. If any judicial inquiry, however summary, had taken place, a distinction might have been made between ringleaders and followers, and the usual mode of punishment would have been employed. At the time when the extra-judicial execution was ordered, the disturbance which had taken place had been effectually suppressed. Mr. Cowan had at his disposal considerable bodies of troops, and there is no evidence whatever to show that actual immediate danger was or could have been apprehended either from the prisoners themselves, or from other members of the sect to which they belonged. The only fact which can be said to suggest the existence of such danger is, that various small bodies of Kúkas were seen in the neighbourhood of Maler Kotla, who promptly disappeared. It appears, however, to his Excellency in Council, that their dispersion was owing to the defeat of their associates, and not to the summary punishment inflicted, and in this belief he is supported by the view taken by his Honor in your letter of the 7th February above quoted, paragraph 10, in which it is said :—

“The Lieutenant Governor is not of opinion that the evidence now submitted indicates that the immediate retirement of the bands of Kúkas who were observed moving towards Kotla, was the result of the executions ordered by Mr. Cowan, for in nearly every instance they are said to have gone

back on the 15th, the day the attack took place, ^{Note.} whereas the executions were carried out on the morning of the 17th. Their retirement appears to have been caused really by the attack having been beaten off by the Kotla people."

"4. It is, in short, obvious, both from the circumstances of the case, and from many expressions in Mr. Cowan's letters, that his motive in ordering the executions was to prevent a rising which he considered imminent, by an act calculated to strike terror into the whole Kúka sect. In illustration of this, it is to be observed that both Mr. Forsyth and Mr. Cowan refer to the small effect which the execution of the Raikot murderers in due course of law had in the way of deterring the Kúkas from further violence.

"5. Before advertng to the peculiar circumstances under which Mr. Cowan acted, the Governor General in Council thinks it right to make some general observations on the principle on which that officer seems to have proceeded, as his Excellency in Council has reason to fear that it may have considerable influence on the minds of officers who feel themselves liable to be placed in positions of difficulty. This principle, perhaps rather felt than avowed, is that law is meant only for quiet times, and that officers are justified in disregarding it, as soon as political danger is apprehended, and in substituting punishments inflicted at their own discretion, and without any other measure than their own estimate, formed on the spot under the pressure of immediate excitement, of what is required in the particular case for the sake of example.

"6. This view appears to his Excellency in Council to involve a grave error.

Note.

“7. His Excellency in Council desires to impress, in the most emphatic manner, on all civil and military officers whom it may concern, the broad principle that the law of the land administered by the established courts is the instrument to which Government looks, and in which it trusts, for the purpose of suppressing crime, maintaining peace, and deterring illdisposed persons from following the example of malefactors ; and that it is a grave act of insubordination and presumption for any individual officer to take upon himself to decide upon the spur of the moment that the law is not strong enough to protect society, or that the punishments which can be inflicted in its ordinary course are not sufficiently severe to deter from crime. To do so is to usurp the highest prerogative of the Government. Cases may arise in which Government may consider it necessary to punish particular offences with exceptional severity, or to arm particular officers with special powers of summary trial and execution ; but till this is done, the duty of all civil and military officers in all cases is to treat criminals when captured in the regular course of law ; that is to say, to hand them over for trial to the proper tribunals.

“8. In order to show that this course is not inconsistent with any degree of vigour and promptitude which can be required in the most arduous circumstances, it is necessary to bear in mind that for the suppression of violent crime, and the apprehension and safe custody of offenders, the law authorises, and indeed requires, the use of any degree of military force which may be necessary for the purpose. Rebels with arms in their hands, gangs of dacoits banded together for the purpose of robbery and murder, persons in the act of waging war against the

Queen, and all who aid and abet them, may and ^{Note.} ought to be attacked by force of arms precisely as armed invaders may be attacked. If their behaviour and number is such that it would, upon military grounds, be improper to grant them quarter if they were engaged in ordinary war, they might be killed upon the spot. In short, there is no severity which by the usages of war may be inflicted upon the enemies' troops for the purpose of defeating and breaking them up, which may not in strict accordance with law be inflicted upon bands of criminals, whether rebels or not, for the purpose of their defeat or arrest.

"9. The one thing which cannot be permitted to any civil or military officer in any case whatever, is the regular assumption of the office of the judge and of the legislator. No such officer has right to punish his prisoners, still less has he any right to punish them according to a law made by himself, after the fact, and in reference to the circumstances of a particular case. The law authorises officers to do whatever is necessary in order to suppress crime and arrest criminals ; but neither law nor any principle of justice or policy justifies them in punishing prisoners, when taken, as they think proper.

"10. Officers may, perhaps, be assisted in understanding and applying to particular cases' as they arise, the principles above stated by a few observations on the policy which they are meant to carry out.

"11. To administer justice with mercy is the fixed and settled policy of the Government of India ; but it is absolutely essential to this great object that justice should be administered according to known

Note.

rules, with due deliberation, and with discrimination between degrees of guilt. Sentences pronounced under excitement, and with little time for reflection, are liable to be neither just nor wise. It is probable that they will bear upon them the stamp of individual resentment or anxiety rather than that of deliberate justice. Summary orders are often taken for acts of vigour when they are in truth acts of weakness. Such orders frequently show that those who give them doubt their own strength, and are afraid to be merciful to their opponents.

“12. The Governor General in Council cannot consent to assume the attitude in which the ratification of such acts would place him. His Excellency in Council trusts, on the one hand, in the effect which a course of just and merciful rule cannot fail to produce in time in the minds of the people. He relies, on the other hand, on the existence of a military force sufficient to protect the mass of quiet and well-disposed persons against the small minority who, for whatever reasons, might be willing to plunge the country into anarchy and civil war.

“13. His Excellency in Council cannot consent to be forced by the crime of a few fanatics into the sanction of acts repugnant to the whole spirit of British rule. The British Government is strong enough to keep order and suppress crime, and there is no occasion for indiscriminate severity ; nor in any case could the exercise of such severity be a source of strength.

“14. With reference to the special circumstances of Mr. Cowan's case, his Excellency in Council has to observe as follows :—

“15. In the first place His Excellency is of

opinion that Mr. Cowan's clear duty was to have ^{Note.} detained the prisoners in custody until they could be proceeded against in due course of law. Referring to the principles already stated, there is no circumstance which tends to justify, or even greatly to excuse, Mr. Cowan's conduct. The prisoners were absolutely helpless. A large proportion of them were badly wounded. They had surrendered to very inferior numbers, and were under the guard of a considerable military force, which might have been increased to any required extent. Under these circumstances their illegal and indiscriminate execution was a measure for which there was no excuse. His Excellency in Council cannot regard as an excuse Mr. Cowan's belief that the execution was politically expedient. In fact, that he set aside the existing law because he thought it expedient to do so in the particular case, is one of the elements in the offence which his Excellency in Council considers Mr. Cowan to have committed.

"16. There are, however, other matters in connection with Mr. Cowan's conduct which it is impossible to pass over, and which have been in part brought to his Excellency's notice at a very late stage in the proceedings. The following references to the documents on record will set this in a clear light.

"17. On the 16th January Mr. Cowan telegraphed to the Punjab Government for leave to execute four men in a summary manner.

"18. On the same day Mr. Forsyth wrote Mr. Cowan a demi-official note which has been lost, in which Mr. Forsyth directed Mr. Cowan to send the prisoners to Sherpur, to be kept until Mr. Forsyth could send a guard to take charge of them.

Note.

Mr. Forsyth believes that his letter said that the guard was to take them into Ludhiana for trial. Mr. Cowan believes that trial was not referred to. Be this at it may, the letter reached Mr. Cowan some hours before any of the executions took place. He says, "I put the note in my pocket, and thought no more about it. It contained only a suggestion, which could not be acted on, for the captured Kúkas were then close to Kotla on their way in." This conduct would imply that, in Mr. Cowan's opinion, the main point of the note was that the men should be sent to Sherpur; whereas it should have been also apparent to Mr. Cowan that Mr. Forsyth desired that the men should be kept in custody.

"19. The executions, therefore, cannot be reconciled with the spirit of Mr. Forsyth's instruction, and took place before any reply had been received to a telegraphic message sent by Mr. Cowan the day before to the Punjab Government for leave to execute four men only.

"20. Before the executions were finished, and whilst six or seven men were tied to the guns, Mr. Cowan received an official letter containing a positive order from Mr. Forsyth to proceed according to law. Mr. Forsyth's words were, "I request that you will prepare at once the case against such as appear to you to be deserving of capital punishment, and I shall then give immediate orders. But with reference to your expressed desire for promptitude, the case is not sufficiently urgent to justify the abandonment of the very simple form of procedure we have at hand." Upon this Mr. Cowan says, "After reading Mr. Forsyth's letter, I handed it to Colonel Perkins, District Superintendent of Police,

with the remark that it would be impossible to stay the execution of the men already tied to guns, that such a proceeding would have the worst effect on the people around us."

"21. His Excellency in Council cannot see that there could have been any serious difficulty in staying the execution without even communicating the reasons for doing so to the bystanders. It was Mr. Cowan's clear duty to obey Mr. Forsyth's order, in a case in which the lives of six or seven persons were at stake, and where the act forbidden was upon the face of it illegal.

"22. While the Governor General in Council recognises that the lives of all the criminals involved in the recent outbreak in the Punjab were in principle forfeited to the laws, his Excellency is under the painful necessity of affirming that the course followed by Mr. Cowan was illegal, that it was not palliated by any public necessity, and that it was characterised by incidents which gave it a complexion of barbarity. That course was commenced in opposition to the spirit of instructions received from superior authority, and in the absence of sanction, invoked but not awaited; it was prosecuted to completion in contravention of positive orders.

"23. Under all these circumstances, his Excellency in Council is, compelled to direct that Mr. Cowan be removed from the service. He does so with deep regret, as Mr. Cowan's previous character and conduct have been unexceptionable, and as he acted with promptitude in concerting measures for the repression of the movement.

"24. It remains now to consider the case of Mr. Forsyth in reference to the approval passed by

Note.

him on the act of Mr. Cowan, and to the confirmation by him as Commissioner of Umballa of the sentence passed by the native officials of the Maler Kotla State, with the concurrence of Mr. Cowan against 16 other prisoners.

“25. In confirming this sentence, and in ordering the immediate execution of the prisoners, Mr. Forsyth was acting in a political rather than in a judicial capacity. It is the duty of officers so situated to be specially on their guard against permitting the native states which are under their superintendence to act with a degree of harshness or precipitation alien to the spirit of English rule ; and although Mr. Forsyth's proceedings were no doubt legal, that fact alone ought not to protect him from censure, if his proceedings showed a want of that merciful discrimination which ought in all cases to be characteristic of the British administration of justice. In this, Mr. Forsyth seems, to his Excellency in Council, to have failed, and the failure was apparently due to his having permitted a not unnatural desire to support a subordinate, to assume undue prominence in his mind in a case where interests of far greater importance were concerned.

“26. On the morning of January 17th, Mr. Forsyth had telegraphed to the Punjab Government, as follows :—

“Referring to Cowan's telegram, asking permission to execute at once four men. Since then we have got 70 men. I am on the spot, and can dispose of the cases according to form, and without delay. Exceptional action not necessary, and would increase excitement better allayed, &c., &c.”

“27. On the night of the 16th, he wrote a Note. demi-official letter, which reached Mr. Cowan before the execution. On the 17th he wrote two separate letters, one official and one demi-official ; the first directing Mr. Cowan, and the second requesting him in the most pressing, though in most friendly terms, not to proceed illegally. On the 18th, having received the report of the executions, he gave an unqualified confirmation of all that Mr. Cowan had done, in the following terms: “My dear Cowan, I fully approve and confirm all you have done. You have acted admirably. I am coming out.” Mr. Forsyth thus anticipated, without necessity, the opinions of the Lieutenant Governor and the Government of India, committed superior authorities as far as he could to sentiments which might be repugnant to their judgment, and directly reversed his own distinct resolution formed and expressed up to that moment. On the same day he confirmed the sentence of the Maler Kotla authorities, and ordered the immediate execution of the 16 men condemned by them, a course which was not warranted by the necessity of making a further example, or by the character of the parties concerned, among whom various shades of guilt might, by a less cursory inquiry, have been discovered.

“28. In Mr. Forsyth’s explanation of the course taken by him, he says in his letter of the 8th April, 1872 :—

“I take this opportunity to make some remarks explanatory of the sentence carried into execution against the 16 men on the 18th January.

“When the case was submitted for my orders,

Note.

I had to consider it in its judicial aspect, as well as from a political point of view.

"Now, taking the judicial view of the case as it stood by itself, quite apart from all other considerations, 16 men belonging to a gang who had committed a double series of murders, were pronounced to be guilty of the charge preferred against them. The sentence for their crime was death ; and, had the case been tried in the courts governed by our codes, it would have been incumbent on me to show very good cause why that sentence should be mitigated. Had the case, then, been a solitary one, there would have been no more ground for hesitating to confirm a sentence of death passed on 16 men, than there would have been last year for the Chief Court to hesitate to pass sentence on 12 men for the murder of the butchers.

"I had, however, to consider all the surrounding circumstances, and the first one which would naturally influence me, was the fact, that so many men had already suffered for the same offence. But there were counterbalancing arguments which I now propose to reproduce.

"One consideration was, that if the case admitted of it, Mr. Cowan ought to be supported. However much I might have deprecated his proposed action, and inwardly deplored it when as yet not taken, still when once done I felt myself placed in an entirely different, and, it

will be readily conceded, in a most ^{Note.} difficult position. To hastily disavow his proceedings, and to cancel his acts at such a moment, I considered would be most unwise."

"He adds, in subsequent paragraphs, that he had a conversation with Ram Singh, which gave him a strong impression of the serious character of the outbreak ; that whilst the sentence was awaiting sanction, he heard a report of Kuka bands being in the neighbourhood ; and that the Sirdar of Malodh pressed him to pass sentence of death. The prominent feeling in his mind, however, seems to have been that Mr. Cowan ought to be supported in an act which Mr. Forsyth himself had repeatedly forbidden.

"29. In conformity with the views enunciated above, his Excellency in Council is of opinion that, while Mr. Forsyth is undoubtedly guiltless of an illegal action, he has in no small degree identified himself with the errors committed by Mr. Cowan ; that he failed to discern his duty as counsellor to a native government in a serious emergency ; and that he acted eventually in a manner inconsistent with the recognised policy of the Government of India.

"30. His Excellency in Council considers that Mr. Forsyth's conduct, will be adequately dealt with by his removal from the Commissionership of Umballa to a position in another province in which he will not have to superintend the judicial proceedings of any native state, and by an expression of the opinion of the Government of India that he ought not in future be placed in a position in which he would be called upon to exercise similar control and superintendence.

Note.

“31. The Govrenor General in Council is constrained to notice, with regret, that two documents essential to the information of the Supreme Government in this case were not brought to his knowledge in regular course, and at the commencement of this correspondence, *viz.*, the demi-official letter written by Mr. Forsyth to Mr. Cowan on the 18th, confirming his proceedings.

“32. It is with great concern that his Excellency in Council feels compelled to pass orders which affect so seriously officers whose fault has no doubt been due mainly to over-zeal for the maintenance of peace and order, but he considers it absolutely necessary to cause it to be understood that, whilst every officer will be fully supported in any measures, however rigorous, which he may be justified by law in adopting for the maintenance or restoration of the peace, no one will be permitted to supersede the law at his own discretion. The line between the two things is broad and clear, and the Governor General in Council would be equally prompt to notice any remissness in the use of the means sanctioned by law for suppressing crime and bringing criminals to justice. He has no fear that the course which it has been necessary to take with regard to the present case will deter other officers from a becoming energy and promptitude in the presence of danger. On the other hand, his Excellency in Council fears as little that the course now taken will be misunderstood by the native population. He trusts that this example will teach them that under British rule all alike must obey the law, and they may be well assured that the punishment now inflicted on a British officer who has broken the law, is not in any way connected with indifference

or indulgence to the crimes of those whom he Note. punished unlawfully. Their offence was deserving of exemplary punishment, though it should have been inflicted in a proper manner, with greater moderation, and with more discrimination, between the degrees of guilt of the persons concerned. And, lastly, his Excellency trusts the present decision will make it clear to all classes that such proceedings as Mr. Cowan's are forbidden by law, and are bad in policy, because they leave no time for moderation and discrimination, and so take away the distinction between the deliberate satisfaction of the requirements of justice, and a hasty acceptance of the suggestions of excitement and alarm.

"33. In communicating this review of the conduct of the Commissioner and the Deputy Commissioner, the Governor General in Council considers it due to his Honor the Lieutenant Governor to refer to the sentiments enunciated by his Honor in connection with those which his Excellency in Council has felt bound to record. The Lieutenant Governor, from the first, embraced and expressed the opinion that the conduct of Mr. Cowan was unjustifiable in regard to the precipitation, illegality, and indiscriminate rigour of his proceedings. A consideration of the exciting circumstances under which Mr. Cowan acted, of the political danger which he apprehended, and of the necessity of supporting officers of Government in acts even of excessive severity when done in good faith, and for the public interest, induced the Lieutenant Governor to withhold an expression of blame which would have been otherwise in accordance with his sentiments, and of which the Governor General in Council would have approved.

Note. His Excellency is, however, happy to be able to recognise that there is no essential difference between the views entertained by the Governor General in Council and those of the high officer entrusted with the administration and security of a province so important as the Punjab."

Lieges convicted by court-martial of crime specified in section 2 liable to immediate punishment of death ;

3.* Any person born or residing under the protection of the British Government within the territories aforesaid and consequently owing allegiance to the said Government, who, in violation of the obligations of such allegiance, shall be guilty of any of the crimes specified in the preceding section, and who shall be convicted thereof by the sentence of a court-martial during the suspension of the functions of the ordinary criminal courts of judicature and the establishment of the martial-law, shall be liable to the immediate punishment of death, and shall suffer the same accordingly by being hung by the neck till he is dead.

and to forfeiture of property.

All persons who shall, in such cases, be adjudged by a court-martial to be guilty of any of the crimes specified in this Regulation, shall also forfeit to the British Government all property and effects, real and personal, which they shall have possessed within its territories at the time when the crime of which they may be convicted shall have been committed.

Governor General not precluded from causing persons charged with

4. The Governor General in Council shall not be precluded by this Regulation from causing persons charged with any of the offences described in the present Regulation to be brought to trial, at

* Certain formal words, which were repealed by the Repealing and Amending Act, 1891 (XII of 1891), have been omitted.

any time, before the ordinary courts of judicature * * * * †, instead of causing such persons to be tried by court-martial, in any cases wherein the latter mode of trial shall not appear to be indispensably necessary. offences to be tried by ordinary courts.

MADRAS REGULATION VII OF 1808.

A Regulation for declaring the powers of the Governor General in Council‡ to provide for the immediate punishment of certain offences against the State by the sentence of court-martial.

This Regulation corresponds with the Bengal State Offences Regulation, 1804 (X of 1804), *ante*, p. 10. It has been declared to be in force in the whole of the Madras Presidency, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 4. Local extent.

Whereas, during wars in which the British Government has been engaged against certain of the Native Powers of India, certain persons owing allegiance to the British Government have borne arms in open hostility to the authority of the same, and have abetted and aided the enemy, and have committed acts of violence and outrage against the

1st April, 1808.

† The words and figures "or before any special court appointed for the trial of such offences, under Regulation IV. 1799 and Regulation XX. 1803", which were repealed by the Repealing Act, 1874 (XVI of 1874), have been omitted.

‡ These words were substituted for the words "Governor in Council" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), Sch. II.

lives and properties of the subjects of the said Government ; and whereas it may be expedient that, during the existence of any war in which the British Government in India may be engaged with any Power whatever, as well as during the existence of open rebellion against the authority of the Government in any part of the British territories subject to the Government of the Presidency of Fort St. George, the Governor General in Council* shall declare and establish martial-law within any part of the territories aforesaid, for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof, by the immediate punishment of persons owing allegiance to the British Government who may be taken in arms in open hostility to the said Government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the act of openly aiding and abetting the enemies of the British Government within any part of the territories above specified,—the following Regulation has been enacted by the Governor in Council to be in force throughout the British territories immediately subject to the Government of the Presidency of Fort St. George * * * †

Governor
in Council
empowered
to establish
martial-law ;

2. The Governor General in Council* is hereby declared to be empowered to establish martial-law within the territories subject to the Government of the Presidency of Fort St. George for any period of

* These words were substituted for the words "Governor in Council" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), Sch. II.

† The words "from the 1st day of October, 1808," which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

time while the British Government in India shall be engaged in war with any Native or other Power, as well as during the existence of open rebellion against the authority of the Government in any part of the territories aforesaid ; and also to direct the immediate trial by courts-martial of all persons owing allegiance to the British Government, either in consequence of their having been born, of their having served under it in any capacity, or of their being resident within its territories and under its protection, who shall be taken in arms in open hostility to the British Government, or in the act of opposing by force of arms the authority of the same, or in the actual commission of any overt act of rebellion against the State, or in the act of conspiring with, or of openly aiding and abetting, the enemies of the British Government within any part of the said territories.

and to direct trial by courts-martial, of lieges offending against Regulation.

As to martial law generally, see note to s. 2 of the Bengal State Offences Regulation, 1804 (X of 1804), *ante*, p. 13.

3. It is hereby further declared that any person born or residing under the protection of the British Government within the territories aforesaid and consequently owing allegiance to the said Government, who, in violation of the obligation of such allegiance, shall be guilty of any of the crimes specified in the preceding section, and who shall be convicted thereof by the sentence of a Court-martial during the establishment of martial-law, shall be liable to immediate punishment of death, and shall suffer the same accordingly by being hanged by the neck until he is dead. All persons who shall in such cases be adjudged by a Court-martial to be guilty of any of the crimes specified in this Regulation,

Punishment of lieges convicted by court-martial of crime specified in section 2.

Forfeiture
of property.

shall also forfeit to the British Government all property and effects, real and personal, which they shall have possessed within its territories at the time when the crime of which they may be convicted shall have been committed.

Power to
cause trial
before
ordinary
courts.

4. The Governor General in Council* shall not be precluded by this Regulation from causing persons charged with any of the offences described in the present Regulation to be brought to trial at any time before the ordinary courts of judicature * * * †

THE BENGAL FOREIGN IMMIGRANTS REGULATION, 1812.‡

(REGULATION XI OF 1812).

A Regulation to empower the Local Government§ to order the removal of emigrants from foreign countries, and their descendants, from any place in the vicinity of the frontier of the

18th August, 1812.

* These words were substituted for the words "Governor in Council" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), Sch. II.

† The words "or before any special court, instead of causing such persons to be tried by courts-martial, in any case wherein the latter mode of trial shall not appear to be indispensably necessary," which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

‡ For this short title, see the Repealing and Amending Act, 1897 (V of 1897), Sch. III.

§ These words were substituted for the words "Governor General in Council" by the Repealing and Amending Act, 1897 (V of 1897), Sch. II.

State from which they may have emigrated; and, in certain cases, to place and detain any such persons in safe custody; and likewise to provide for the trial of emigrants and their descendants who may excite disturbances in the countries from which they may have emigrated, and of persons aiding them in the prosecution Local extent. of such attempts.

This Regulation has been declared to be in force in the whole of the Lower Provinces of Bengal and of the North-Western Provinces, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6. It has been declared, by notification under the Scheduled District Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, Dumson, Assam, the scheduled portion of the Mirzapur District and Jaunsar Bewar. It is apparently not in force in the Punjab. Extended to Upper Burma except the Shan States by s. 5, Act, XIV of 1874.

This Regulation is supplemented by the provisions of the Foreigners Act, 1864 (III of 1864), *post*, Preamble.

1. Whereas considerable bodies of persons, being Natives of Arakan and ordinarily denominated Muggs, have from time to time emigrated from that country and established themselves in that part of the district of Chittagong which lies contiguous to the Arakan frontier ;

and whereas numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in the British territories, have excited disturbances and even levied war in the country of Arakan against the Government of Ava,

of which State Arakan is now a dependency, and have conducted themselves in a manner manifestly tending to disturb the relations of amity which subsist between the British Government and the Government of Ava ;

and whereas it is, in consequence, necessary that the Local Government* should possess legal powers to remove the said bodies of emigrants and their descendants from the frontier of the territory of Arakan, or any other bodies of aliens, or their descendants, from the vicinity of country from which they may have emigrated, and likewise to detain in confinement any of those persons, or any other individuals being Natives of foreign countries, or their descendants, for offences of the above nature actually committed by them in the territories of the State from which they may have emigrated ;

and whereas it is necessary to make provision for the trial of persons committing, or aiding in the commission of, the said offences, the following rules have been passed, to be in force from the period of their promulgation throughout the territories immediately dependent on the Presidency of Fort William.

Power to
order
removal of
emigrants
to parts of
country
deemed
convenient.

2. Whenever the Local Government†, upon due investigation, shall be satisfied that the emigrants from Arakan, or emigrants from any other State, who may have sought an asylum in the British territories, or the descendants of any of the said emigrants, shall

* These words were substituted for the words "Governor General in Council" by the Repealing and Amending Act, 1897 (V of 1897), Sch. II.

† Sic? Ought to have been altered to "it" when the words "Local Government" were substituted for the words "Governor General in Council."

have abused the protection afforded to them by attempts to excite disturbances in the State from which they or their ancestors may have emigrated, it shall be competent to the Local Government* to order the removal of those persons to such other part or parts of the country as may be judged most convenient for their future residence.

In like manner it shall be competent to the Local Government* to order such removal whenever he † may have grounds to be satisfied that the residence of any body of aliens, or their descendants in the vicinity of the frontier of the country from which they or their ancestors may have emigrated, is likely to cause any serious misunderstanding between that State and the British Government. Emigrants allowed to dispose of property.

3. Whenever any body of emigrants, or any individuals belonging to such body, shall be ordered to be removed from the part of the country in which they may have been established, they shall be allowed to dispose of any property which they may have acquired in such manner as they may judge proper :

Provided, however, that if they shall nevertheless retain the right to any real property at the period of their actual removal, it shall be competent to the Local Government* to order such property to be sold by public auction under the superintendence of the Collector of the District.

In that case, the nett proceeds of the sale shall

* These words were substituted for the words "Governor General in Council" by the Repealing and Amending Act, 1897 (V of 1897), Sch. II.

† Sic? Ought to have been altered to "it" when the words "Local Government" were substituted for the words "Governor in Council."

be duly paid to the person or persons to whom the said property belonged.

Power to order leaders or other emigrants to be apprehended and kept under restraint.

4. In cases in which the Local Government* may, on due inquiry and mature deliberation, be satisfied that either the preservation of the tranquility of the British territories, or of the dominions of the allies of the British Government, or the maintenance of the relations of amity subsisting between the British Government and other States, requires that any of the leaders or other persons of the above description, who may have committed the offences mentioned in section 2 of this Regulation, should be placed and detained under restraint, it shall be competent to the Local Government* to order any such persons having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place, and under the custody of such public officer, and detained in confinement for such time, as may be deemed by the Local Government* necessary for the public good.

Punishment for immigrants or their descendants exciting disturbance in countries from which they emigrated.

5. *First*.—Any persons of the above descriptions, or their descendants, who while living under the protection of the British Government, shall enter the country from which they or their ancestors may have emigrated, or any other foreign country, and shall excite or attempt to excite, disturbances in the said countries, shall be liable to be brought to trial for that offence * * * †, and, if convicted, shall be sentenced to suffer imprisonment for the period of seven years.

* These words were substituted for the words "Governor-General in Council" by the Repealing and Amending Act, 1897 (V of 1897) Sch. II.

† The words "before the Court of Circuit," which were repealed by the Repealing Act, 1874 (XVI of 1874), s. 1, have been omitted.

Second.—Any persons, whether Native British subjects or aliens, who shall furnish emigrants from foreign countries with any assistance, either of men, money or arms, in prosecution of their attempts to excite disturbances in the country from which they may have emigrated, or in any other country, or shall otherwise aid such aliens in the prosecution of their criminal design, shall be liable to be brought to trial for that offence * * * †, and, if convicted, shall be sentenced to suffer imprisonment for the term of seven years :

Punishment for persons aiding and abetting in attempts to excite such disturbances.

2. Provided, however, that if the Judge * * * † Proviso. by whom the case may be tried shall be of opinion that the punishment established by this and the preceding clause should in any instance be mitigated he shall submit the proceedings held on the trial to the Local Government, and the Local Government shall pass such orders thereon as it may think fit. §

Provided, moreover, that no sentence or order which may be passed on the trial of any persons under the provisions of the present Regulation shall be competent, or shall be construed, to preclude the Local Government* from the exercise of the power vested in the Government by s. 4 of the said Regulation.

† The words "of Circuit" which were repealed by Repealing Act, 1874 (XVI of 1874), s. 1, have been omitted.

§ These words were substituted for the words "Nizamut Adalat, who will recommend to the Governor-General in Council such alleviation of the prescribed punishment as they may judge proper" by the Repealing and Amending Act, 1897 (V of 1897), Sch. II.

THE BENGAL STATE PRISONERS REGULATION, 1818.*

(REGULATION III OF 1818.)

A Regulation for the confinement of State Prisoners.

Local extent. This Regulation has been declared to apply to the whole of Bengal and of the North-Western Provinces, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6. It has by the Santhal Parganas' Settlement Regulation (III of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation, 1886 (III of 1886), s. 2, been declared in force in the Santhal Parganas. It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, Western Duars, Hazaribagh, Lohardugga, Manbhoom, Pargana Dhalbhoom, Assam, the scheduled portion of the Mirzapur District and Jaunsar Bawar. It has been extended under the same Act, s. 5, to Darjeeling, the Kolhan, Angul, Kumaon and Garhwal and the North-Western Provinces Tarai. It has been declared in force in Oudh by the Oudh Laws Act, 1876 (XVIII of 1876), and in the Punjab by the Punjab Laws Act, 1872 (IV of 1872).

For further provisions, see the State Prisoners Act, 1850 (XXXIV of 1850), and the State Prisoners Act, 1858 (III of 1858) also the Act, 1871 (V of 1871)', s. 15.

Preamble.

1. Whereas reasons of State, embracing the

7th April, 1818.

* For this short title, see the Repealing and Amending Act, 1897 (V of 1897), Sch. III.

due maintenance of the alliances formed by the British Government with foreign Powers, the preservation of tranquillity in the territories of Native Princes entitled to its protection, and the security of the British dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adapted to the nature of the case, or may for other reasons be inadvisable or improper ;

and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the Governor General in Council ;

and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the Governor General in Council all circumstances relating either to the supposed grounds of such determination or to the manner in which it may be executed ;

and whereas the ends of justice also require that due attention be paid to the health of every State prisoner confined under this Regulation, and that suitable provision be made for his support according to his rank in life and to his own wants and those of his family ;

and whereas the reasons above declared sometimes render it necessary that the estates and lands

of zamindars, taluqdars and others, situated within the territories dependent on the Presidency of Fort William, should be attached and placed under the temporary management of the Revenue authorities without having recourse to any judicial proceeding ;

and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government ;

the Vice-President in Council has enacted the following rules, which are to take effect throughout the Provinces immediately subject to the Presidency of Fort William from the date on which they may be promulgated.

Proceeding
for placing
persons
under
restraint
as State
prisoners.

2 *First*.—When the reasons stated in the preamble of this Regulation may seem to the Governor General in Council to require that an individual should be placed under personal restraint without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment under the authority of the Governor General in Council and under the hand of the Chief Secretary or of one of the Secretaries to Government shall be issued to the officer in whose custody such person is to be placed.

Form of
warrant.

Second.—The warrant of commitment shall be in the following form :—

To the [*here insert the officer's designation.*]

“Whereas the Governor General in Council, for good and sufficient reasons, has seen fit to determine that [*here insert the State prisoner's name*] shall be placed under personal restraint at [*here insert the name of the place*], you are hereby required and

commanded, in pursuance of that determination, to receive the person abovenamed into your custody and to deal with him in conformity to the orders of the Governor General in Council and the provisions of Regulation III of 1818.

“Fort William, the

By order of the Governor General in Council

“A B., Chief Secy., to Govt.”

Third.—The warrant of commitment shall be sufficient authority for the detention of any State prisoner in any fortress, jail or other place within the territories subject to the Presidency of Fort William. Authority of warrant.

As to the persons to whom warrants may be addressed, see the State Prisoners Act, 1850 (XXXIV of 1850), and the Prisoners Act, 1871 (V of 1871), s. 15. For power to remove a State prisoner to any other place of confinement in British India, see the State Prisoners Act, 1858 (III of 1858), s. 5.

As to the references in this Regulation to the Chief Secretary to the Government of Fort William in Bengal, see the Secretaries to Government Act, 1834 (II of 1834).

3. Every officer in whose custody any State prisoner may be placed shall, on the first of January and first of July of each year, submit a report to the Governor General in Council, through the Secretary to Government in the Political Department, on the conduct, the health and the comfort of such State prisoner, in order that the Governor General in Council may determine whether the orders for his detention shall continue in force or shall be modified. Officers having custody of State prisoners, to submit periodical reports.

4. *First.*—When any State prisoner is in the

State prisoners in custody of zila or city Magistrate by whom to be visited.

custody of a zila or city Magistrate, the Judges * *† are to visit such State prisoner on the occasion of the periodical sessions, and they are to issue any orders concerning the treatment of the State prisoner which may appear to them advisable, provided they be not inconsistent with the orders of the Governor General in Council issued on that head.

State prisoners in custody of public officer not being zila or city Magistrate by whom to be visited.

Second.—When any State prisoner is placed in the custody of any public officer not being a zila or city Magistrate, the Governor General in Council will instruct either the zila or city Magistrate, or the Judge * *† or any other public officer, not being the person in whose custody the prisoner may be placed, to visit such prisoner at stated periods, and to submit a report to Government regarding the health and treatment of such prisoner.

Representations by State prisoners to be submitted to Government.

5. The officer in whose custody any State prisoner may be placed, is to forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the Governor General in Council.

Report to Government regarding confinement, &c., of prisoners.

6. Every officer in whose custody any State prisoner may be placed, shall, as soon after taking such prisoner into his custody as may be practicable, report to the Governor General in Council whether the degree of confinement to which he may be subjected, appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family according to their rank in life.

* The words "of Circuit," which were repealed by the Repealing Act, 1874 (XVI of 1874), s. 1, have been omitted.

7. Every officer in whose custody any State prisoner may be placed, shall take care that the allowance fixed for the support of such State prisoner is duly appropriated to that object. Appropriation of allowance for support.

The provisions of this Regulation were much discussed in a series of applications made on behalf of one Amir Khan, a Native Indian subject, who was arrested in Calcutta and detained in the Alipore jail under a warrant issued by the Governor General in Council under it.

In the first case [*Re Ameer Khan* (1870), 6 B. L. R., 392] Norman, J., held that the Calcutta High Court had power to grant a writ of *Habeas Corpus* in respect of a person imprisoned in the mofussil, but that such a writ could not be granted where the person was in custody under a warrant issued under this Regulation.

In the second case [*Re Ameer Khan* (1870), 6 B. L. R., 456] the same Judge refused to issue a writ of *Mainprise* to admit the person confined under this Regulation to bail.

In the third case [*Re Ameer Khan* (1870), 6 B. L. R., 459] Phear and Markby, J. J., without deciding whether the High Court had power to issue a writ of *Habeas Corpus* into the mofussil, held that a warrant under this Regulation was sufficient authority for the detention of the prisoner without regard to the lawfulness of his arrest.

In the fourth case [*Queen v. Amir Khan* (1871), 9 B. L. R., 36] a Full Bench of the Calcutta High Court held that the Governor General, in issuing a warrant of commitment under this Regulation, had not acted judicially, nor was he to be considered as having adjudicated that the person imprisoned had

been guilty of any specific offence. Therefore imprisonment under it is no bar to a subsequent prosecution for a specific offence.

8. [*Applicability of ss. 3-7 to persons now confined as State prisoners.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Attachment
of estates by
order of
Government
without
decision of
Court.

9. Whenever the Governor General in Council, for the reasons declared in the preamble to this Regulation, shall judge it necessary to attach the estates or lands of any zamindar, jagirdar, taluqdar or other person, without any previous decision of a Court of Justice or other judicial proceeding, the grounds on which the resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated, under the hand of one of the Secretaries to Government, to the Judge and Magistrate of the district in which the lands or estates may be situated * * *† [and]‡ to the Sadar Diwani Adalat and Nizamat Adalat.

Management
of attached
estates.

10. *First.*—The lands or estates which may be so temporarily attached shall be held under the management of the officers of Government in the Revenue Department, and the collections shall be made and adjudged on the same principles as those of other estates held under khas management.

Attached
lands not
liable to
sale in
execution.

Second.—Such lands or estates shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realisation of fines or otherwise.

* The words "to the Provincial Court of Appeal and Circuit, and," which were repealed by the Repealing Act, 1874 (XVI of 1874), s. 1, have been omitted.

† This word, which had been inadvertently repealed by Act XVI of 1874, was re-inserted by the Repealing and Amending Act, 1891 (XII of 1891).

during the period in which they may be so held under attachment.

Third.—In the case mentioned in the preceding clause, the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil Courts. Government to arrange for satisfaction of decrees.

11. Whenever the Governor General in Council shall be of opinion that the circumstances which rendered the attachment of such estate necessary, have ceased to operate and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue-authorities will be directed to release the estate from attachment, to adjust the accounts of the collections during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment. Rules as to cases where Government orders release of estate from attachment.

MADRAS REGULATION II OF 1819.

A Regulation for the confinement of State Prisoners.

This Regulation has been declared to be in force in the whole of the Madras Presidency, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 4. As regards the country of Rampa and the taluqs of Bhadrachalam and Rakapilli, see Appendix, Madras Code, Ed. 1888. The *Habeas Corpus* section (491) Local extent.

Preamble.

of the Code of Criminal Procedure, 1882 (X of 1882), does not apply to persons detained under this Regulation. As to commitments by the Agents in Ganjam and Vizagapatam, see Act XXIV of 1839, s. 7.

For further provisions, see the State Prisoners Act, 1850 (XXXIV of 1850), and the State Prisoners Act, 1858 (III of 1858) ; also the Prisoners Act, 1871 (V of 1871), s. 15. Compare the Bengal State Prisoners Regulation, 1818, and the notes thereto, *ante* pp. 82—89 and Bombay Regulation XXV of 1827,

Whereas reasons of State policy occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper ; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the Governor in Council ; and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the Governor in Council all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed ; and whereas the ends of justice also require that due attention be paid to the health of every State

prisoner confined under this Regulation, and that suitable provision be made for his support, according to his rank in life and to his own wants and those of his family ; and whereas the reasons above declared sometimes render it necesasry that the estates and lands of zamindars, taluqdars and others, situated within the territories dependent on the Presidency of Fort St. George, should be attached and placed under the temporary management of the Revenue authorities, without having recourse to any judicial proceeding ; and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government ; the Governor in Council has enacted the following rules, which are to take effect throughout the Province of Fort St. George

* * *.†

2. *First*.—When the reasons stated in the preamble of this Regulation may seem to the Governor in Council to require that an individual should be placed under personal restraint without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment under the authority of the Governor in Council, and under the hand of the Chief Secretary, or of one of the Secretaries to Government, shall be issued to the officer in whose custody such person is to be placed.

Procedure in placing persons restraint as State prisoners.

Second.—The warrant of commitment shall be according to the form prescribed in the Appendix to this Regulation.

Form of warrant.

* The words "from the date on which they may be promulgated," which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

Warrant to be authority for detention of State prisoner.

Third.—The warrant of commitment shall be sufficient authority for the detention of any State prisoner in any fortress, jail or other place within the territories subject to the Presidency of Fort St. George.

Officers having custody of State prisoners to report to Government.

3. Every officer in whose custody any State prisoner may be placed, shall, on the first of January and first of July of each year, submit a report to the Governor in Council, through the Chief Secretary to Government, on the conduct, the health and the comfort of such State prisoner, in order that the Governor in Council may determine whether the orders for his detention shall continue in force or shall be modified.

Representations by State prisoners to be submitted to Government.

4. [*State prisoners to be periodically visited.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

5. The officer in whose custody any State prisoner may be placed, is to forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the Governor in Council.

Report as to their confinement, health and allowances.

6. Every officer in whose custody any State prisoner may be placed, shall, as soon after taking such prisoner into his custody as may be practicable, report to the Governor in Council whether the degree of confinement to which he may be subjected appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family according to their rank in life.

Allowance to be appropriated for support of State prisoner.

7. Every officer in whose custody any State Prisoner may be placed, shall take care that the allowance fixed for the support of such State prisoner is duly appropriated to that object.

8. [*Foregoing provisions made applicable to persons already confined as State prisoners.*] Rep. by the Repealing Act, 1876 (XII of 1876).

9. Whenever the Governor in Council, for the reasons declared in the preamble to this Regulation, shall judge it necessary to attach the estates or lands of any zamíndár, jágírdár, taluqdár or other person without any previous decision of a Court of Justice or other judicial proceeding, the grounds on which the resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated, under the hand of one of the Secretaries to Government, to the Judge of the district in which the lands or estates may be situated, * * * † and to the Sadar and Faujdári Adálat.

Attachment of estates by orders of Government when to be communicated to Court.

10. *First.*—The lands or estates which may be so temporarily attached shall be held under the management of the officers of Government in the Revenue Department, and the collections shall be made and adjusted on the same principles as those of other estates held under khás management.

Management of attached estates.

Second.—Such lands or estates shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realisation of fines or otherwise, during the period in which they be so held under attachment.

Not liable to be sold while under attachment.

Third.—In the cases mentioned in the preceding clause the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil Courts.

Satisfaction for decrees of Courts.

* The words "to the Provincial Court of Appeal and Circuit," which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

Procedure
when
Government
releases
estate from
attachment.

11. Whenever the Governor in Council shall be of opinion that the circumstances which rendered the attachment of such estate necessary, have ceased to operate and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue-authorities will be directed to release the estate from attachment, to adjust the accounts of the collection during the period in which they may have been superintended by the officers of the Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment.

APPENDIX.

Form of Warrant of Commitment.

To the (*here insert the officer's designation*).

Whereas the Governor in Council, for good and sufficient reasons, has seen fit to determine that (*here insert the State prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby required and commanded, in pursuance of that determination, to receive the person above-named into your custody and to deal with him in conformity to the orders of the Governor in Council and the provisions of Regulation II of 1819.

Fort St. George, the

By order of the Governor in Council,

A.B., Chief Secy. to Govt.

As to the persons to whom warrants may be addressed, see note to the Bengal State Prisoners Regulation, 1818, s. 2, *ante*, p. 84.

BOMBAY REGULATION XXV OF 1827.

A Regulation for the confinement of State Prisoners and for the attachment of the lands of Chieftains and others for reasons of State.

This Regulation has been declared to apply to the whole of the Bombay Presidency, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874). It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the Province of Sindh, in Aden, in certain villages belonging to the Mehwassi Chiefs and in the Peint Territory.

It is supplemented by the State Prisoners Act, 1850 (XXXIV of 1850, and the State Prisoners Act, 1858 (III of 1858), also by the Prisoners Act, 1871 (V of 1871), s. 15.

Compare the Bengal State Prisoners Regulation, 1818 (III of 1818), and Madras Regulation II of 1819, *ante*, pp. 82 and 89 respectively.

Whereas reasons of State, embracing the due maintenance of the alliances formed by the British Government with foreign Powers, the preservation of tranquillity in the territories of Native Princes entitled to its protection and the security of the British dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceedings, or when such proceedings may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper ;

and whereas it is fit that, in every case of the nature herein referred to, the measures adopted should emanate immediately from the Governor in Council ; and whereas the reasons above declared sometimes render it necessary that the estates and lands of zamindars, taluqdars and others, situated within the zilas subordinate to Bombay, should be attached and placed under the temporary management of the Revenue-authorities without having recourse to any judicial proceeding ;
the following rules have therefore been enacted * *†

CHAPTER I.

RULES FOR THE APPREHENSION AND CONFINEMENT OF INDIVIDUALS AS STATE PRISONERS.

Proceeding
for placing
persons
under
restraint
as State
prisoners.

1. *First*.—When any of the considerations stated in the preamble of this Regulation may seem to the Governor in Council to require that an individual should be placed under restraint without any immediate view to ulterior proceedings of a judicial nature, it shall be lawful for the Governor in Council, *provided always that, with reference to the individual, the measure shall not be in breach of British law,† to cause such individual to be apprehended*

* The words "to have effect from such date as shall be prescribed in a Regulation to be hereafter passed for that purpose" which were repealed by the Repealing Act, 1873 (XII of 1873), have been omitted.

† So much of this clause as provides that, with reference to the individual, the apprehension and confinement therein

in such manner as the Governor in Council may deem fit and, when apprehended, to be delivered over to any officer in whose custody it may be deemed expedient that he shall be placed, with a warrant of commitment to such officer's address.

Second.—The warrant of commitment shall be in the form specified in Appendix A, and shall be sufficient authority for the detention of any State prisoner in any fortress, jail or other place within the zilas subordinate to Bombay.

Form and authority of warrant.

2. The Governor in Council shall fix such allowance for the support of the State prisoner as may seem to him expedient in reference to the prisoner's habits and rank in society, and shall specify at the same time through whose means it is to be paid and how it is to be applied.

Allowance for support of State prisoner.

3. Every officer in whose custody any State prisoner may be placed shall, on the first of January and first of July of each year, submit a report to the Governor in Council, through the Secretary to Government in the Political Department, on the conduct, the health and the comfort of such State prisoner, in order that the Governor in Council may determine whether the orders for his detention shall continue in force or shall be modified.

Report to Government as to conduct &c., of prisoner.

4. *First.*—[*Powers of Judge of Circuit.*] *Rep. Prisoner in custody of officer other than Magistrate by whom to be visited.*
by the Repealing Act, 1873 (XII of 1873).

Second.—When any State prisoner is placed in the custody of any public officer not being a

referred to shall not be in breach of British law, was repealed by the State Prisoners Act, 1858 (III of 1858), s. 1, except in so far as the said provision applies to European British subjects.

District* Magistrate * * *,† the Governor in Council shall instruct either the District‡ Magistrate or any other public officer, not being the person in whose custody the prisoner may be placed, to visit such prisoner at stated periods and to submit a report to Government regarding the health and treatment of such prisoner.

Report to Government as to confinement, &c., of prisoner.

5. *First*.—Every officer in whose custody any State prisoner may be placed shall, as soon after taking such prisoner into his custody as may be practicable, report to the Governor in Council whether the degree of confinement to which he may be subjected, appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family according to their rank in life.

Representations of prisoner to be submitted.

Second.—The officer in whose custody any State prisoner may be placed is to forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the Governor in Council.

Attachment of estates by order of Government without decision of Court.

6. [*Persons already confined as State-prisoners*].
Rep. by the Repealing Act, 1876 (XII of 1876).

7. Whenever the Governor in Council, for reasons of the nature of those specified in the preamble to this Regulation, shall judge it necessary to attach the estates or lands of any zamindar, jagirdar, taluqdar or other person without any previous decision of a Court of justice or other judicial proceeding, the grounds on which the

* The word "District" was inserted by the Bombay General Clauses Act, 1886 (Bom. Act III of 1886), s. 2.

† The words "or the Judge on circuit," which were repealed by the Repealing Act, 1873 (XIII of 1873), have been omitted.

resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated, under the hand of one of the Secretaries to Government, to the Judge and the District* Magistrate or other civil authorities of the district in which the lands or estates may be situated * * * †.

8. *First.*—The lands or estates which may be temporarily attached shall be held under the management of the officers of Government in the Revenue Department, and the collections shall be made and adjusted on the same principles, if consistent with the rights of others, as had been followed by the proprietor, provided, however, that any change may be introduced which the proprietor may desire, and which may not infringe on private rights, nor appear objectionable to the Collector; and annual accounts of the management of the lands attached shall be furnished to the proprietor.

Second.—Such lands or estates, while so under attachment, shall not be liable to be sold by process of law, or otherwise, without the mutual consent of Government and the proprietor; but the annual income or any portion of it may, if Government shall so direct, be applicable to the satisfaction of decrees of the Civil Court.

9. Whenever the Governor in Council shall be of opinion that the circumstances which rendered the attachment of such estate necessary, have ceased to operate and that the management of the estate

Management of attached lands.

Attached lands how saleable in execution. Income applicable to satisfaction of decrees

Rules as to cases where Government orders release from attachment.

* The word "District" was inserted by the Bombay General Clauses Act, 1886 (Bom. Act III of 1886), s. 2.

† The words "and to the Sudder Adawlat," which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

Note.

can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue-authorities will be directed to release the estate from attachment, to adjust the accounts of the collections during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estates which may have accumulated during the attachment.

APPENDIX A.

To the (*here insert the officer's designation*).

Whereas the Governor in Council, for good and sufficient reasons, has resolved that (*here insert the State-prisoners name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby ordered, in pursuance of that resolution, to receive the person above-named into your custody and to deal with him in conformity to the orders of the Governor in Council and the provisions of Regulation XXV, A. D. 1827.

By order of the Governor in Council,

(Signed) A.B., Secretary to Government.

Bombay Castle,

—day of—18—.

As to the direction of such warrants, see the State Prisoners Act, 1850 (XXXIV of 1850), as applied to Bombay by the State Prisoners Act, 1858 (III of 1858), s. 3; also the Prisoners Act, 1871 (V of 1871), s. 15.

THE STATE PRISONERS ACT, 1850.*

(XXXIV OF 1850).

An Act for the better Custody of State Prisoners.

This Act has been declared in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874) s. 3. It has been declared in force in the Santhal Parganas by the Santhal Parganas Laws Regulation, 1886 (III of 1886), s. 6 and Sch., and in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 and Sch. II. It has been extended to the Shan States by notification under the Upper Burma Laws Act, 1886 (XX of 1886), s. 8, and by the Shan States Laws and Criminal Justice Order, 1895. It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, in force in Sindh, Aden, West Jalpaiguri, Western Dooars, Hazaribagh, Lohardugga, Manbhoom, Pargana Dhalbhoom, the Kolhan, Jhansi, the scheduled portion of the Mirzapur District, Jaunsar Bawar, Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul, the Scheduled Districts of the Central Provinces and Sylhet. It has been extended, by notification under s. 5 of the same Act, to Kumaon and Garhwal, Ajmeer and Merwara, and the Andaman and Nicobar Islands. Its application has been extended to Bombay and Madras by the State Prisoners Act, 1858 (III of 1858), s. 3.

* 23rd August, 1850. For this short title, see the Indian Short Titles Act, 1897 (XIV of 1897).

Preamble.

Whereas doubts have been entertained whether State prisoners confined under Regulation III, 1818, of the Bengal Code, can be lawfully detained in any fortress, goal or other place within the limits of jurisdiction of any of the Supreme Courts of Judicature established by Royal Charter, and it is expedient that such doubts be removed and the powers of the said Regulation extended to all the territories under the government of the East India Company. It is enacted as follows :—

Officers to whom warrant of commitment of State prisoners under Ben. Regulation III of 1818 may be addressed.

1. The warrant of commitment of any State prisoner, under Regulation III, 1818, of the Bengal Code, may be directed to the Sheriff of the gaol of any of the Supreme Courts of Judicature established by Royal Charter in the said territories, or to the commandant of any fortress, or to the officer in charge of any gaol or other place, in which it is deemed expedient that such State prisoner be confined, in any part of the said territories ; and such warrant shall be sufficient authority for the detention of such State prisoner in the fortress, gaol or other place mentioned in the warrant.

Regulation III of 1818 extended.

Prisoners detained under this Act are not affected by the provisions of s. 491 of the Code of Criminal Procedure, 1882 (X of 1882), which takes power for the Chartered High Courts to issue directions of the nature of a *Habeas Corpus*—see the last clause of the section cited.

2. Regulation III, 1818, of the Bengal Code, shall be extended and applied to every Sheriff, commandant or officer, having any State prisoner in custody under the said Regulation, as explained and extended by this Act.

3. [*Confinement of State prisoners legalised.*]

Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

As to this Act, see *Re Ameer Khan* (1870), 6 B. L. R., at pp. 392—459.

As to offences against the State, see the Indian Penal Code, Chap. VI.

THE STATE OFFENCES ACT, 1857.

(XI OF 1857).*

An Act for the prevention, trial, and punishment of offences against the State.

This Act has been declared to be in force in the whole of British India, except as regards the ^{Local extent.} Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 3. It has been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), and applied to the Kachin Hill-tribes by the Kachin ^{Preamble.} Hill-tribes Regulation, 1895 (I of 1895). It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in Sindh, West Jalpaiguri, Western Dooars, Hazaribagh, Lohardugga, Manbhoom, Pargana Dhalbhoom, the Kolhan, Jhansi, Kumaon and Garhwal, the scheduled portion of the Mirzapur District, Jaunsar Bawar, Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul, the Scheduled Districts of the Central Provinces and

* 30th May, 1857. For this short title, see the Indian Short Titles Act, 1897 (XV of 1897).

Assam (except the North Lushai Hills). It has been extended, by notification under s. 5 of the same Act, to the North-Western Provinces Tarai.

As to this Act, see *Ganeshlal v. Amir Khan* (1872), 8 B. L. R. 83.

Whereas it is necessary to make due provision for the prevention, trial and punishment of offences against the State ; It is enacted as follows :—

1.—[*Punishment for rebellion or for waging war against Government.*] Rep. by Act XVII of 1862 (*Repealing Act*).

2.—[*Punishment for harbouring or concealing offenders.*] Rep. by Act XVII of 1862 (*Repealing Act*).

Executive Government may issue a Commission for the trial of persons charged with certain offences in any proclaimed District.

3. Clause 1.—Whenever the Executive Government of any Presidency or place * * * † shall proclaim that any District subject to its Government is or has been in a state of rebellion, it shall be lawful for such Government to issue a Commission for the trial of all persons who shall be charged with having committed within such District, after a day to be specified in the Commission, any * * * ‡ crime against the State, or murder, arson, robbery, or other heinous crime against person or property.

In the Statement of Objects and Reasons laid before the Council by Sir Barnes Peacock, the words “district in a state of rebellion” are explained as referring to a disturbed district “in which any great

† The words “within the said territories,” which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

‡ The words “of the crimes mentioned in the preceding sections, or any other,” which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

interval between conviction and punishment must deprive the punishment of its due effect."

Clause 2.—The Commissioner or Commissioners authorized by any such Commission may hold a Court in any part of the said District mentioned in the Commission, and may there try any person for any of the said crimes committed within any part thereof ; it being the intention of this Act that the District mentioned in the Commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one District.

Court may be held in any part of the District.

4. It shall be lawful for the Executive Government, by such Commission, to direct that any Court held under the Commission shall have power, without * * * † the assistance of Assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by law for such crime ; and that the judgment of such Court shall be final and conclusive ; and that the said Court shall not be subordinate to the Sudder Court.

Government may vest certain powers in the Court.

5. If a Commission be issued under the authority of this Act, any Magistrate within the District which is described in the Commission may commit persons charged with any of the aforesaid crimes within such District for trial before a Court to be held under this Act.

Magistrate may commit persons for trial before a Court held under this Act.

6. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects.

Act not to apply to British-born subjects or their children.

† The words "the attendance or futwa of a Law Officer or", which were repealed by the Repealing Act, 1876 (XII of 1876), have been omitted.

7 to 10. [*Proclamation prohibiting the carrying of arms, etc.*] *Rep by the Repealing Act, 1876 (XII of 1876).*

11. The word "Magistrate" in this Act shall include any person * * * † specially authorized by the Executive Government to exercise the powers vested in a Magistrate by this Act.

THE STATE PRISONERS ACT, 1858.* (III OF 1858).

An Act to amend the Law relating to the arrest and detention of State Prisoners.

Local
Extent.

This Act has been declared in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 3. S. 5 has been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886). The whole Act has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in Sindh, Aden, West Jalpaiguri, Western Dooars, Hazaribagh, Lohardugga, Manbhoom, Paragana Dhalbhoom, the Kolhan, Jhansi, the scheduled portion of the Mirzapur District, Jaunsar Bawar,

† The words "lawfully exercising the powers of a Magistrate and any Assistant to a Magistrate or Deputy Magistrate", which were repealed by this Repealing Act, 1876 (XII of 1876), have been omitted.

* 23rd January, 1858. For this short title, see the Indian Short Titles Act, 1897 (XIV of 1897).

Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul, the Scheduled Districts of the Central Provinces and Sylhet. It has been extended, by notification under s. 5 of the same Act, to Kumaon and Garhwal and the North-Western Provinces Tarai.

As to this Act, see *Re Ameer Khan* (1870). 6 B. L. R., at pp. 392 and 459.

Whereas doubts have been entertained whether Preamble.
State Prisoners confined under Regulation II, 1819 of the Madras Code, or Regulation XXV, 1827 of the Bombay Code, can be lawfully detained in any fortress, jail or other place within the local limits of the jurisdiction of the Supreme Courts of Judicature at Madras and Bombay, respectively ; and it is expedient that such doubts be removed, and that the powers of the said Regulations and of Regulation III, 1818 of the Bengal Code be extended ; It is enacted as follows :—

1. [Repeal] *Rep. by the Repealing Act, 1870*
(XIV of 1870). *

2. The provisions of Regulation III, 1818 of the Bengal Code, Regulation II, 1819 of the Madras Code, and Regulation XXV, 1827 of the Bombay Code as altered by section I of this Act, relating to the arrest and confinement of persons as State Prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Courts of Judicature at Calcutta, Madras and Bombay respectively.

Regulation relating to the arrest and confinement of State Prisoners in the three Presidencies, to be in force within Supreme Court jurisdiction.

* This section repealed, except as regards European British subjects, so much of the first clause of s. 1 of Bombay Regulation XXV of 1827 (*ante*, p. 95) as provided that, with reference to the individual, the apprehension and confinement therein referred to should not be in breach of British law.

Prisoners detained under this Act are not affected by the provisions of s. 491 of the Code of Criminal Procedure, 1882 (X of 1882), which takes power for the Chartered High Courts to issue directions of the nature of a *Habeas Corpus*—see the last clause of the section cited. For Regulation III, 1818, of the Bengal Code, see the Bengal State Prisoners Regulation, 1818, *ante*, p. 82. For Regulation II, 1819, of the Madras Code and Regulation XXV, 1827, of the Bombay Code, see *ante*, pp. 89 & 95.

Powers under Act XXXVI of 1850 may be exercised by the Governors in Council of Fort St. George and Bombay.

3. All powers for the better custody of State Prisoners which by virtue of Act XXXIV of 1850 are vested in the Governor General in Council, shall be possessed and may be exercised by the Governor in Council of Fort St. George and the Governor in Council of Bombay, respectively, for the better custody of State Prisoners arrested within their respective Presidencies.

See the State Prisoners Act, 1850, *ante*, p. 101.

4. [*Arrests, etc., made before passing of Act legalized.*] *Rep by the Repealing and Amending Act, 1891 (XII of 1891).*

Removal of State Prisoners from one place of confinement to another.

5. The Governor General in Council may order the removal of any State Prisoner, confined under the provisions of any of the said Regulations, as amended and extended by this act, from any fortress, jail or place in which he may be confined within either of the said Presidencies, to any other fortress, jail or place of confinement within the territories in the possession and under the Government of * * * India * †

† The words "the East" and the word "Company," which were repealed by the Repealing and Amending Act, 1891 (XII of 1891), have been omitted.

THE FOREIGNERS ACT, 1864.*

(III OF 1864.)

An Act to give the Government certain powers with respect to Foreigners.

This Act has been declared in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), s. 3. It has been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886). It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3., to be in force in Sindh, West Jalpaiguri, Western Dooars, Western Hills of Darjeeling, Darjeeling Tarai, Dumson, Hazaribagh, Lohardugga, Manbhoom, Paragana Dhalbhoom, the Kolhan, Jhansi, the scheduled portion of the Mirzapore District, Jaunsar Bawar, Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul, the Scheduled Districts of the Central Provinces and Assam (except the North Lushai Hills). It has been extended, by notification under s. 5 of the same Act, to Kumaon and Garhwal and the North-Western Provinces Tarai.

As to the provisions of this Act generally, see *Alter Kaufman. v. Government of Bombay*, I. L. R., 18 Bom., 636.

Whereas it is expedient to make provision to Preamble.
enable the Government to prevent the subjects of Foreign States from residing or sojourning in British India, or from passing through or travelling therein,

* 12th February, 1864. For this short title, see the Indian Short Titles Act, 1897 (XIV of 1897).

without the consent of the Government ; It is enacted as follows :— ,

Interpreta-
tion.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say :—

“British
India.”

The words “British India,” shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria, Chap. 106, entitled “An Act for the better Government of India :” †

“Local Gov-
ernment.”

The words “Local Government,” shall denote the persons authorized to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor General of India in Council, when such chief executive officer shall, by an order of the Governor General of India in Council published in the Gazette of India, be authorized to exercise the powers vested by this Act in a Local Government :

“Foreigner.”

The word “foreigner” shall denote a person, not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 and 4 William IV, Chap. 85‡, section 81, or a Native of British India :

“Magistrate
of the
district.”

The words “the Magistrate of the district,” shall denote the chief officer charged with the executive administration of a district and exercising the powers

† The Government of India Act, 1858—see the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

‡ The Government of India Act, 1833—see the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure :*

The word "vessel" shall include any thing made "Vessel." for the conveyance by water of human beings or property :

Words importing the singular number shall Number. include the plural number, and words importing the plural number shall include the singular number :

Words importing the masculine gender shall Gender. include females.

2. If a question shall arise whether any person Proof of alleged to be a foreigner and to be subject to the being a foreigner. provisions of this Act is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

3. The Governor General of India in Council Government may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order ; and any Local Government may, by writing, make the like order with reference to any foreigner within the jurisdiction of such Government. may order any foreigner to remove himself.

4. If any foreigner ordered to remove himself Foreigner refusing to remove, or returning from British India, or ordered to remove himself therefrom by a particular route, shall neglect or

* Now the Code of Criminal Procedure, 1882 (X of 1882)—see s. 3 *ibid*.

without
license after
removal,
may be
apprehended
and
detained.

refuse so to do, or if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor-General of India in Council or by the Local Government under whose order he shall have removed himself or been removed, such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor-General of India in Council or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor-General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the allies of Her Majesty, and of the neighbouring Princes and States.

By international law the right of a sovereign State to exclude undesirable foreigners from its territory appears to be universally admitted see Halls' *International Law*, Ed. 4, pp. 58, 59.

By English municipal law the right of the Executive, apart from legislation, to exclude foreigners is of somewhat doubtful scope. The right of the Crown to prevent foreigners from entering British territory has been constantly asserted. The right to expel foreigners who have been permitted to enter, has been contested, and, in any case, there is a want of machinery to carry into effect these somewhat indefinite powers, (*Law Quarterly Review*, April, 1897, p. 165.) Resort, therefore, must be had to legislation. In *Musgrove. v. Chun Teeong Toy* (1891), A. C. 272, at pp. 282, 283, the Privy

Council held that, quite apart from a colonial statute restricting the immigration of Chinese, an alien had no legal right enforceable by action to enter British territory.

By s. 84 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), the Governor General in Council "is required, as soon as conveniently may be, to make laws or regulations providing for the prevention or punishment of the illicit entrance into, or residence in, the said territories (*i.e.*, British India) of persons not authorized to enter or reside therein." Governor General may order all the provisions of this Act to be in force in British India, or in any part thereof.

Act III of 1864 was apparently passed in pursuance of this direction from Parliament. There seems to be only one decision on its provisions, *viz.*, *Alter Kaufman. v. Government of Bombay* (1894), I. L. R., 18 Bom., 636. In that case a foreigner was, by warrant of the Governor of Bombay in Council issued under s. 3, ordered to remove himself from British India by sea to Odessa. The warrant further directed all officers to whom it was communicated, to see that it was duly obeyed and, in the event of disobedience, to apprehend and detain the foreigner in question pending further orders. The Bombay High Court upheld the validity of the Act, but ordered the release of the foreigner on the ground of the informality of the warrant, holding (1) that there was no power to direct the foreigner to deport himself to a particular place beyond British India, (2) that the warrant failed to give a sufficiently full description of the foreigner and his residence, and (3) that the warrant was bad for being conditional. There ought, it was ruled, to have been an order to the foreigner to remove himself from British India and then, in the event of his non-compliance after

notice, a separate order authorizing his arrest and detention in jail.

Proviso.

5. Whenever the Governor General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor General of India in Council, by a notification published in the Gazette of India, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared ; and thereupon, and for such period, the whole of this Act, including this and the subsequent sections, shall have full force and effect in British India or such part thereof as shall have been so specified. The Governor General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein :

Provided that none of the provisions of this or the subsequent sections of this Act shall extend to any Foreign Minister duly accredited by his Government ; to any Consul or Vice-Consul ; to any person under the age of fourteen years ; or to any person in the service of Her Majesty.

No notification appears to have been issued under this section, so that the only provisions of the Act which, so far, are operative, are those of sections 1 to 4 (inclusive).

**Every
foreigner to
report his
arrival in**

6. Every foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued

as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall, if he arrive at a Presidency-town forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the district or to such other officer as shall be appointed to receive such reports by the Governor General of India in Council or by the Local Government of such place.

India in certain cases.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such Presidency-town or other place. The report shall be recorded by the officer to whom it is made.

What to be stated in the report.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein, but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreign masters and seamen to report themselves in certain cases.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

Foreigners neglecting to report themselves.

10. No foreigners shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force, without a license.

No foreigner to travel in India without a license.

License by
whom to be
granted.

11. Licenses under this Act may be granted by the Governor General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor General of India in Council or by any of the Local Governments.

What to be
stated in
license.

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

License may
be granted
subject to
conditions,
and may be
revoked.

13. The license may be granted subject to such conditions as the Governor General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary. Any license may be revoked at any time by the Governor General of India in Council, or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force and in which the foreigner holding the same may be, or by the officer who granted the license.

Foreigner
travelling
without or
contrary to
the condi-
tions of
license, may
be appre-
hended.

14. If any foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned

officer in the service of Her Majesty, or by any member of a Volunteer Corps enrolled by authority of Government whilst on duty, or by any police officer.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a police officer, he shall be delivered over as soon as possible to a police officer and forthwith carried before the Magistrate of the district. Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and shall cause the person brought before him to be discharged, or to be conveyed to one of the Presidency-towns, or pending the orders of such Government to be detained.

Procedure upon apprehension.

Magistrate to report to Government.

16. Any person apprehended or detained under the provisions of this Act, may be admitted to bail by the Magistrate of the district or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

Persons apprehended may be admitted to bail.

17. The Local Government of any part of British India in which all the provisions of this Act are for the time being in force, may order any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India by sea or by such other route as the said Local Government may direct; or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit. The Governor General of India in Council

Removal of persons apprehended.

may exercise all the powers given by this section to any Local Government.

Governor General may prohibit persons not being natural-born subjects from travelling or passing through any part of India without a license.

18. The Governor General of India in Council may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the Statute 3 & 4 William IV, Chap. 85*, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may for the time being be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order: and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act and carried before the Magistrate of the district and dealt with under the provisions of section 17 in the same manner as if he were a foreigner: and the Governor General of India in Council may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

Also the Local Governments within their respective jurisdictions.

19. The Local Government of any Presidency or place in which all the provisions of this Act may for the time being be in force, may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the Statute 3 & 4 William IV, Chap. 85§,

* The Government of India Act, 1833—see the Short Titles Act, 1896 (50 & 60 Vict., c. 14).

§ The Government of India Act, 1833—see the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

Section 81, from travelling in or passing through such Presidency or place or any part thereof, and from passing from any part thereof to another, without a license to be granted by such officer or officers as shall be specified in the order ; and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act and carried before the Magistrate of the district and dealt with under the provisions of section 17 in the same manner as if he were a foreigner ; and the Local Government may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any police officer under the authority of such Commissioner or Magistrate, to enter any vessel in any part or place within British India in which all the provisions of this Act may for the time being be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel ; and it shall be lawful for such Commissioner of Police, Magistrate or other officer as aforesaid to adopt such means as may be reasonably necessary for that purpose ; and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate or other officer as aforesaid, deliver to him a list in writing of the

Certain officers may board vessels to ascertain whether foreigners are on board.

Master of vessel to furnish list of passengers, and to give information respecting them.

passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate or other officer as aforesaid. If any

Foreigner refusing to give account of himself, not to be allowed to disembark.

21. If the master or commander of a vessel shall wilfully give a false answer to any question which, by section 20 of this Act, he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

Penalty for false answer or report.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

Penalty for neglect by master of vessel to comply with requisitions of Act.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act, shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

Penalty for obstructing officers.

24. All fines imposed under this Act may be recovered in the manner provided by the law for

Fines imposed under this

the time being in force for the recovery of fines imposed by criminal courts.* Act how to be recovered

25. The Governor General of India in Council, or the Local Government of any part of British India in which this Act may for the time being be in force, may exempt any person or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption. Persons may be exempted from provisions of this Act.

ACT No. XXIII OF 1867. §

An Act for the suppression of murderous outrages in certain Districts of the Panjab.

Whereas in certain districts of the Panjab Preamble. fanatics have frequently murdered or attempted to murder servants of the Queen and other persons: and whereas the general law of the country is not adequate to suppress such offences; It is hereby enacted as follows:—

1. It shall be lawful for the Lieutenant-Governor of the Panjab, with the previous consent of the Governor General of India in Council, by proclamation published in the official Gazette, from time to time to declare any part or parts of the territories under his government to be subject to the operation of all or any of the provisions of this Act, Lieutenant-Governor empowered to extend this Act to any part of the Punjab.

* These words were substituted for the original words by the Repealing and Amending Act, 1891 (XII of 1891).

§ 18th March, 1867.

and also, by such proclamation and with such consent as aforesaid, from time to time to withdraw from the operation of such provisions any part or parts of the said territories which he may previously have declared to be subject thereto, and in like manner, as occasion shall require, to subject the same part or parts again to the operation of the same provisions, or of any of them.

Under this section the districts of Peshawar, Kohat, Hazara, Dera Ghazi Khan, Dera Ismail Khan and Bannu have been declared by notification No. 1063, dated the 25th July, 1878, Panjab Gazette, 1878, Pt. 1, p. 289.

Fanatics
murdering
or attempt-
ing to mur-
der liable
to death or
transporta-
tion for life,
and for-
feiture of
property.

2. Any fanatic who shall murder or who shall, within the meaning of the Indian Penal Code, section 307, attempt to murder any servant of the Queen or other person, shall, on conviction thereof, be punished either with death or with transportation for life, and all his property shall be forfeited to Government.

3. [*Offences under this Act to be offences under the Indian Penal Code.*] *Rep. by the Repealing Act, 1874 (XVI of 1874.)*

Forfeiture
of property
and disposal
of bodies of
fanatics
killed in
committing
outrages
punishable
under this
Act.

4. Whenever any fanatic shall be killed in the act of committing any such offence as aforesaid, or, being wounded and taken prisoner in the act of committing any such offence as aforesaid, shall afterwards die of his wounds, it shall be competent to the Sessions Judge or Commissioner* who under the provisions hereinafter contained would have had cognizance of the offence if the offender could have been brought to trial, to proceed to hold an inquest into the circumstances of the death of the offender,

* Substituted for the word "Commissioner" by Act IX of 1877, s. 2.

and, on proof of his having been killed as aforesaid or of his having died of wounds received as aforesaid, to adjudge that the whole of his property shall be forfeited to Government and to dispose of his body as such Commissioner shall think fit.

5. Subject to the provision contained in section 14 of this Act, any offence triable under this Act shall be tried by the Sessions Judge or Commissioner* of the division in which it has been committed; and in respect of all such offences, the Sessions Judge or Commissioner* shall follow the procedure prescribed for a Magistrate by sections 248 to 255 (both inclusive) of the Code of Criminal Procedure†: Trial before Commissioner.
XXV of 1861. Provided that, if he shall be of opinion that any witness or evidence is offered for the purpose of vexation or delay or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness or evidence is material, and if the Sessions Judge or Commissioner* be not so satisfied, he shall not be bound to summon the witness or examine the evidence so offered.

6. Trials under this Act before the Sessions Judge or Commissioner* shall be conducted with the aid of two or more Assessors as members of the Court. The Sessions Judge or Commissioner* may appoint such persons‡ (other than persons specified in section 334 of the Code of Criminal Procedure) Trial to be with aid of Assessors.
XXV of 1861

* Substituted for the word "Commissioner" by Act IX of 1877, s. 2.

† Act XXV of 1861. The corresponding provisions are now to be found in s. 204 and Chapter XXI of the Code of Criminal Procedure, 1882 (X of 1882)—see s. 3, *ibid*, read with s. 2 of the Code of Criminal Procedure (X of 1872).

‡ The corresponding provision is now to be found in s. 405 of the Code of Criminal Procedure, 1882 (X of 1882)—see s. 3,

at such time, and in such manner as he may think fit to serve as Assessors, and no persons shall be exempt, within the meaning of Section 335* of the same Code, from serving as such Assessors. The provisions of the Code of Criminal Procedure shall, save as aforesaid, apply to Assessors appointed under this section.

What the judgment is to specify.

7. When any trial under this Act is concluded, if the accused person be convicted, it shall be sufficient if the Court in passing judgment and in recording the finding and sentence, shall specify the offence of which he is convicted, and the Court shall immediately issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence to be carried into execution, and such sentence shall be carried into execution accordingly. No sentence of death passed under this Act shall require confirmation by any Court.

Disposal of bodies of criminals sentenced to death.

8. When any person shall be sentenced to death under this Act, his body shall be disposed of as the Sessions Judge or Commissioner† by whom he was so sentenced shall direct.

Proceedings to be reported to Lieutenant-Governor.

9. The proceedings in every trial held under this Act shall be reported to the Lieutenant-Governor, without unnecessary delay, by the officer before whom such trial shall have been held.

ibid, read with s. 2 of the Code of Criminal Procedure (X of 1872).

* The corresponding provision is now to be found in s. 406 of the Code of Criminal Procedure, 1882 (X of 1882)—see s. 3, *ibid*, read with s. 2 of the Code of Criminal Procedure (X of 1872).

† Substituted for the word "Commissioner" by Act IX of 1877, s. 2.

10. Notwithstanding anything contained in the Code of Criminal Procedure† or in any other enactment for the time being in force,‡ no appeal shall lie from any order or sentence under this Act.

No appeal from orders or sentences under this Act.

11. If any Sessions Judge or Commissioner in whom jurisdiction is vested by this Act shall be of opinion that the accused person has committed an offence punishable under the Indian Penal Code, but that such offence is not contemplated by the preamble to this Act, the offender shall be dealt with in manner provided in such case by the Code of Criminal Procedure.†

Procedure when Commissioner thinks that offender's crime is not contemplated by this Act.

12. The said Lieutenant-Governor shall have, with respect to the confinement of any person charged with or suspected of an intention to commit any offence punishable under this Act, the powers which are vested in the Governor General of India by any law regarding the confinement of persons charged with or suspected of State offences§ ; and the provisions of any such law shall, *mutatis mutandis*, be applicable to all cases in which the Lieutenant-Governor shall proceed under the authority of this section.

Lieutenant-Governor's powers as to confinement of persons under this Act.

13. Any person having the full powers of a Magistrate may cause any person against whom there are in his judgment grounds of proceeding

Power of Magistrate as to persons suspected.

† See now the Code of Criminal Procedure, 1882 (X of 1882), and s. 3, *ibid*, read with s. 2 of the Code of Criminal Procedure (X of 1872).

‡ Substituted for the words and figures "the Punjab Chief Court Act, 1866," by the Repealing and Amending Act, 1891 (XII of 1891).

§ See the Bengal State Prisoners Regulation, 1818, the State Prisoners Act, 1850, and the State Prisoners Act, 1858, *ante*, pp. 82, 101 and 106.

under the last preceding section, to be apprehended ; and, after such enquiry as he may think necessary, may detain such person in safe custody until he shall have received the orders of the said Lieutenant-Governor, to whom in all such cases, he shall report his proceedings without unnecessary delay.

Exercise of jurisdiction conferred by this Act.

14. The jurisdiction conferred by this Act on a Sessions Judge or Commissioner* may be exercised, in the case of any offence punishable under this Act, by any person having the full powers of a Magistrate whom the Sessions Judge or Commissioner* to whom he may be subordinate, or the said Lieutenant-Governor, shall after the commission of such offence, specially invest with such jurisdiction.

Power to withdraw any class of cases from operation of Act.

15. It shall be lawful for the said Lieutenant-Governor, either on his own motion or at the request of the Chief Court of the Panjab, from time to time, to withdraw any class of cases from the operation of this Act.

Power to issue circular orders.

16. With the previous consent of the said Lieutenant-Governor, but not otherwise, the said Chief Court may, from time to time, make and issue circular orders for the guidance of officers in cases under this Act ; provided that such orders are consistent with the provisions herein contained. All such orders shall be published in the official Gazette, and shall be obeyed by the officers aforesaid.

17. [*Expiration of Act.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*†

* Substituted for the word "Commissioner" by Act IX of 1877, s. 2.

† Section 17 declared that the Act should expire in ten years from the date of its passing, or at such earlier date as the Governor General in Council might order. It was, however, revived and continued by Act IX of 1877, s. 1.

ACT No. XXV OF 1867.*

An Act for the regulation of Printing-presses and Newspapers for the preservation of copies of books printed in British India, and for the registration of such books.

[As modified up to the 1st October, 1907.]

Whereas it is expedient to provide for the Preamble regulation of printing-presses and of periodicals

* March 22, 1867. Short title. "The Press and Registration of Books Act, 1867. See the Indian Short Titles Act, 1897 (14 of 1897), General Acts, Vol. VI. General Acts, Vol. VI.

For Statement of Object and Reasons, see Gazette of India, 1867, p. 191; and for Proceedings in Council, see *ibid*, Supplement, pp. 72, 156 and 299.

This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

It has been applied to the Santhál Parganas Settlement Regulation (3 of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (3 of 1899), Bengal Code, Vol. I; and to Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I, Burma Code, p. 260.

It has been applied by notification under s. 3 (a) of the Scheduled District Act, 1874 (14 of 1874), to the following Scheduled Districts, namely:—

the Province of Sindh, see Gazette of India, 1880, Pt. I, p. 672;

Aden, see Gazette of India, 1879, Pt. I, p. 434 ;

the territory of Peint, see Gazette of India, 1887, Pt. I, p. 144;

the Island of Perim, see Gazette of India, 1887, Pt. I, p. 5; that portion of the Jalpaiguri District which was formerly the Jalpaiguri Subdivision and now forms the western portion of the District of Jalpaiguri and extends as far east as the Teesta River, the hills west of the Teesta River in the District of Darjiling, the Darjiling Tarai, the Damson Subdivision of the Darjiling District, the Districts of Hazaribagh, Lohardugga [now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44] and Manbhoom, and Pargana Dhalbhum and the Kolhán in the District of Singhbhum, see Gazette of India, 1881, Pt. I, pp. 74 and 504;

the Districts of Kumáon and Garhwál, see Gazette of India, 1876, Pt. I, p. 605;

the scheduled portion of the Mirzapur District, see Gazette of India, 1879, Pt. I, p. 383;

Pargana Jaunsar Bawar in the Dehra Dun District, see Gazette of India, 1879, Pt. I, p. 382;

containing news, for the preservation of *copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Interpreta-
tion clause.

1. In this Act, unless there shall be something repugnant in the subject or context,—

“Book.”

“book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed :

“British
India.”

“British India” means the territories which are or shall be vested in Her Majesty or Her

the Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan, see Gazette of India, 1886, Pt. I, p. 48; portions of the districts of Hazara, Bannu, Dera Ismail Khan, and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form part of the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and 1902, Pt. I, p. 575;

the Districts of Kamrup, Nowgong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Duars) and Cachar (excluding the North Cachar Hills), see Gazette of India, 1878, Pt. I, p. 533;

the Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Duars in the Goalpara District, see Gazette of India, 1897, Pt. I, p. 299;

the District of Sylhet, see Gazette of India, 1879, Pt. I, p. 631.

It has been declared by notification under s. 3 (b) of the same Act, 1874 (14 of 1874), not to be in force in the Scheduled District of Lahaul in the Punjab, see Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the same Act, to the Tarai District of the North-Western Provinces, see Gazette of India, 1876, Pt. I, p. 506.

* The word “three” in the preamble was repealed by the Press and Registration of Books Amendment Act, 1890 (10 of 1890), s. 1, General Acts, Vol. V.

Successors by the* Statute 21 & 22 Vict., cap. 106 (*An Act for the better government of India*)

* * * * † :

“Magistrate” means any person exercising the full powers of a Magistrate,‡ and includes a §Magistrate of Police * * * * || :

words in the singular include the plural, Number. and *vice versa* :

words denoting the masculine gender include females : Gender.

And in every part of British India to which this Act shall extend,¶ “Local Government” shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner. ^{“Local Government.”}

2. [*Repeal of Act XI of 1835.*] *Rep. Act XIV of 1870.*

* Short title “The Government of India Act, 1858,” see Collection of Statutes relating to India, Vol. I, p. 300.

Cf. definition in s. (24) of the General Clauses Act, 1897 (10 of 1897), General Acts, Vol. VI.

† The words “other than the Settlement of Prince of Wales’ Island, Singapore and Malacca” were repealed by the Repealing and Amending Act, 1891 (12 of 1891), General Acts, Vol. VI.

‡ Now Magistrate of, the first class, see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 3, reprinted as modified up to 1st April, 1903.

§ Now Presidency Magistrate, see the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 3, and the Code of Criminal Procedure, 1898, mentioned above.

|| The words “and a Justice of the Peace” were repealed by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 2, General Acts, Vol. V.

¶ As to the places in British India in which the Act is in force, see the foot-note on p. 3.

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

Particulars
to be printed
on books
and papers.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published)* [the name of the publisher] and the place of publication.

Keeper of
printing-
press to
make decla-
ration.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be :

“I, A. B., declare that I have a press for printing at——.”

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

Rules as to
publication
of printed
periodicals
containing
public news.

5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down :

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration :

* The words “the name” were inserted by the Repealing and Amending Act, 1891 (12 of 1891), General Acts, Vol. VI.

“I, A. B., declare that I am the printer [or publisher, or printer and publisher] of the periodical work entitled—and printed [or published or printed and published, *as the case may be*] at——.”

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted :

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary :

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Authenti-
cation of
declaration.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or* [other principal Civil High Court of original jurisdiction for the place where] the said declaration shall have been made.

Deposit.

* These words in s. 6 were substituted for the words “other Court within the local limits of whose ordinary original civil jurisdiction” by the Press and Registration of Books Act (1867) (10 of 1890), s. 3, General Acts, Vol. V.

Inspection
and supply
of copies.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

Office copy
of declaration
to be
prima facie
evidence.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

New declaration
by
persons who
have signed
declaration
and subsequently
ceased to be
printers or
publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

“I, A. B., declare that I have ceased to be the printer [or publisher, or printer and publisher] of the periodical work entitled——.”

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Authentica-
tion and
filing.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Inspection
and supply
of copies.

In all trials in which a copy attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

Putting
copy in
evidence.

PART III.*

DELIVERY OF BOOKS.

9. Printed or lithographed copies of the whole of every book which shall be printed or

Copies
of books
printed after

* This Part was substituted for the original Part III (relating to the delivery to the Local Government of all published books,

commence-
ment of
Act to be
delivered
gratis to
Government.

lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say* :—

- (a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,
- (b) if within one calendar year from such day the Local Government shall require the printer to deliver other

etc., and to the payment therefor and disposal of the copies) by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 4, General Acts, Vol. V.

* For officers to whom books are to be delivered under this section in—

- (1) Ajmer, see Ajmer Local Rules and Orders, Vol. I, p. 8.
- (2) Assam, see Assam Manual of Local Rules and Orders, p. 10 (rule 1.)
- (3) Bengal, see Bengal Statutory Local Rules and Orders, Vol. II, p. 16 (rule 1).
- (4) Bombay, see Bombay Local Rules and Orders, Vol. I, p. 31.
- (5) Burma, see Burma Rules Manual, Vol. I, p. 10.
- (6) Central Provinces, see Central Provinces Local Rules and Orders, p. 22 (rule 1).
- (7) Madras, see Madras Local Rules and Orders, Vol. I, p. 32 (rule 1).
- (8) Panjab, see Panjab List of Local Rules and Orders, p. 23.
- (9) United Provinces, see United Provinces List of Local Rules and Orders, List 3, p. 24.

such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

- (i) any second or subsequent edition of a book in which edition no additions' or alterations either in the letter-press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

Receipt
for copies
delivered
under
section 9.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal
of copies
delivered
under
section 9.

11. The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine.* Any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be.

PART IV.

PENALTIES.

Penalty for
printing
contrary to
rule in
section 3.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

* As to where copies in Burma are to be deposited, see Notification No. G. D. 123, dated 13th June, 1890, Burma Rules Manual, Ed. 1903; in the United Provinces, see Notification quoted at p. 24 of the United Provinces List of Local Rules and Orders, Ed. 1904.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Punishment for making false statement.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

Penalty for printing or publishing periodicals without conforming to rules.

*16. If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that

Penalty for not delivering books or not supplying

* This section was substituted for the original s. 16 by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 5, General Acts, Vol. V.

printer
with maps.

section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

Recovery of
forfeitures
and disposal

*17. Any sum forfeited to the Government under the last foregoing section may be

* This section was substituted for the original s. 17 by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 5, General Acts, Vol. V.

recovered, under the warrant of the Magistrate ^{thereof and} determining the sum, or of his successor in office, ^{of fines.} in the manner authorised by the Code of Criminal Procedure* for the time being in force, and within the period prescribed by the †Indian Penal Code, for the levy of a fine. XLV of 1860.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

PART V.

REGISTRATION OF BOOKS.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this‡ behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered§ Registration of memoranda of books.

* See the Code of Criminal Procedure, 1898 (Act 5 of 1898), as modified up to 1st April, 1903.

† See the reprint of the Act as modified up to 1st April, 1903.

‡ For notification directing by whom and where the catalogue of books under this section is to be kept in (1) Assam Gazette, 1905, Pt. II, p. 190, and (2) Burma, see Burma Rules Manual, Ed. 1903.

§ These words in s. 18 were substituted for the words and figure "pursuant to section 9" by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), s. 6, General Acts, Vol. V.

[pursuant to clause (a) of the first paragraph of section 9] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

- (1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language :
- (2) the language in which the book is written :
- (3) the name of the author, translator or editor of the book or any part thereof :
- (4) the subject :
- (5) the place of printing and the place of publication :
- (6) the name or firm of the printer and the name or firm of the publisher :
- (7) the date of issue from the press or of the publication :
- (8) the number of sheets, leaves or pages :
- (9) the size :
- (10) the first, second or other number of the edition :
- (11) the number of copies of which the edition consists :
- (12) whether the book is printed or lithographed :

(13) the price at which the book is sold to the public : and

(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the* [copy thereof pursuant to clause (a) of the first paragraph of section 9].

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said Catalogue, be deemed to be an entry in the Book of Registry kept under† Act No. XX of 1874 (*for the encouragement of learning in the territories subject to the Government of the East India Company by the defining and providing for the enforcement of the right called copyright therein*) ; and the provisions contained in that Act as to the said Book of Registry shall apply, *mutatis mutandis*, to the said Catalogue.

Effect of
Registration.

Act XX of
1847 applied.

19. The memoranda registered during each quarter in the said Catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the

Publica-
tion of
memoranda
registered.

* These words were substituted for the words "copies thereof in manner aforesaid" by the Press and Registration of Books Act (1867) Amendment Act 1890 (10 of 1890), s. 6, General Acts, Vol. V.

† See the reprint of the Act as modified up to 1st December, 1903.

memoranda so published shall be sent to the said Secretary of State and to the Secretary to the Government of India in the Home Department, respectively.

PART VI.

MISCELLANEOUS.

Power to
make rules.

20. The Local Government shall have power to make such rules* as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

* For rules made under this power for—

- (1) Ajmer-Merwara, see Ajmer Local Rules and Orders, Vol. I, p. 8;
- (2) Assam, see the Eastern Bengal and Assam Gazette, 1906, Pt. II, p. 359;
- (3) Bengal, see Bengal Statutory Local Rules and Orders, Vol. II, p. 16;
- (4) Bombay, see the Bombay Local Rules and Orders, Ed. 1896, p. 32;
- (5) Burma, see the Burma Rules Manual, Ed. 1903;
- (6) Central Provinces, see the Central Provinces List of Local Rules and Orders, Ed. 1896;
- (7) Madras, see Fort St. George Gazette, 1902, Pt. I B., p. 204, and *ibid*, 1907, Pt. I. B., p. 20;
- (8) Punjab, see Punjab Gazette, 1904, Pt. I, p. 432;
- (9) United Provinces, see United Provinces List of Local Rules and Orders, Vol. I, List 3, p. 25.

21. The Governor General of India in Council may, by notification in the Gazette of India,* exclude any class of books from the operation of the whole or any part or parts of this Act. Power to exclude any class of books from operation of Act.

22. [Continuance of parts of Act.] Rep. Act X of 1890, s. 7.

23. [Commencement.] Rep. Act XIV of 1870.

ACT No. XIX OF 1876.†

An Act for the better control of public dramatic performances.

Whereas it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene ; It is hereby enacted as follows : Preamble.

1. This Act may be called "The Dramatic Performances Act, 1876 :†

Short title.

It extends to the whole of British India ;

And it shall come into force at once.

Local extent.

2. In this Act "Magistrate" means, in the Presidency Towns a Magistrate of Police, and elsewhere the Magistrate of the District. Commencement.
"Magistrate" defined.

* For exemptions under this section, see General Statutory Rules and Orders, Vol. I, pp. 154 and 155.

† Received the assent of the Governor General on the 16th December, 1876.

Power to prohibit certain dramatic performances.

3. Whenever the Local Government is of opinion that any play, pantomime, or other drama performed or about to be performed in a public place is—

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government established by law in British India, or

(c) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency Towns and Rangoon the Local Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money, shall be deemed a “public place” within the meaning of this section.

Power to serve order of prohibition

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is intended to take place; and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with imprison-

ment for a term which may extend to three months, or with fine, or with both.

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited. Power to notify order.

6. Whoever, after the notification of any such order— Penalty for disobeying prohibition.

(a) takes part in the performance prohibited thereby, or in any performance substantially the same as the performance so prohibited, or

(b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(d) being the owner or occupier, or having the use of, any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

7. For the purpose of ascertaining the character of any intended public dramatic performance, the Local Government or such officer as it may specially empower in this behalf, may Power to call for information.

apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

Power to grant warrant to Police to enter and arrest and seize.

8. If any Magistrate has reason to believe that any house, room or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of police to enter with such assistance as may be requisite, by night or by day, and by force if necessary, and such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

Saving of prosecutions under Penal Code, sections 124A and 294.

9. No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code.

Power to prohibit dramatic performances in any local area, except under license.

10. Whenever it appears to the Local Government that the provisions of this section are required in any local area, it may, with the sanction of the Governor-General in Council, declare, by notification in the local official

Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Local Government, or such officer as it may specially empower in this behalf.

The Local Government may also order that no dramatic performance shall take place in any place of public entertainment, within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Local Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment, and if thereafter he does, or willingly permits, any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

11. The powers conferred by this Act on the Local Government may be exercised also by the Governor General in Council.

Powers
exercisable
by Governor
General.

12. Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals.

Exclusion
of perform-
ances at
religious
festivals.

THE SEDITION PUBLICATIONS ACT, 1882.*

An Act to amend the law relating to Seditious Publications.

Preamble. Whereas it is expedient to amend the law relating to Seditious Publications ; It is hereby enacted as follows :—

Short title. 1. This Act may be called "The Seditious Publications Act, 1882."

Local extent. Commencement It extends to the whole of British India ; and shall come into force at once."

Note. This Act has been declared to be in force in the Santhal Parganas by the Santhal Parganas Laws Regulation, 1886 (III of 1886), s. 3 has been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886).

2. [*Repeal.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*

Section inserted after section 60, Act No. XIV of 1866. 3. After section 60 of Act No. XIV of 1866 (*The Indian Post Office Act, 1866*) the following section shall be inserted, namely :—

"60A. Whenever any notification has been published under section nineteen of the Sea Customs Act, 1878, in respect of any newspaper, book, pamphlet, placard, broadsheet or other document, any officer of the Postal Department empowered in this behalf by the Governor General in Council, by name or in virtue of his office, may search, or cause search to be made, for any copies of the same in the custody of that Department, and shall deliver all such copies found to such officer as the Governor

* (III of 1882) 19th January, 1882.

General in Council may appoint in this behalf by Note. name or in virtue of his office, and such copies may be disposed of in such manner as the Governor General in Council may from time to time direct."

Section 19 of the Sea Customs Act, 1878 (VIII of 1878), is as follows :—

"19. The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India."

THE INDIAN TELEGRAPH ACT, 1885. (III OF 1885).

* * * *

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the Governor General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor General in Council, may—

- (a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act ; or
- (b) order that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof mentioned in the order.

Power for Government to take possession of licensed telegraphs and to order interception of messages.

Note.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

“Conclusive proof” is thus defined by s. 4 of the Indian Evidence Act, 1872 (I of 1872):—“When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.”

ACT No. XV OF 1889.*

An Act to prevent the Disclosure of Official Documents and Information.

Whereas it is expedient to prevent the disclosure of official documents and information; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Official Secrets Act, 1889; and

Title,
extent and
application.

* 17th October, 1889. As modified up to 1st April, 1904.

† For Statement of Object and Reasons, see Gazette of India, 1889, Pt. V, p. 206; and for Proceedings in Council, see *ibid*, Pt. VI, pp. 167 and 176.

For Statement of Objects and Reasons of the Indian Official Secrets (Amendment) Act, 1904 (V of 1904), see Gazette of India, 1903, Pt. V, p. 464; for Report of the Select Committee, see *ibid*, 1904, p. 13; for Proceedings in Council, see *ibid*, 1903, Pt. VI, pp. 156, 188 and 198, *ibid*, 1904, Pt. VI, pp. 14 and 27.

(2) It extends to the whole of British India, and applies—

- (a) to all subjects of His Majesty within the dominions of Princes and States in India in alliance with His Majesty, and
- (b) to all native Indian subjects of His Majesty without and beyond British India.

2. In this Act, unless there is something Definitions.
repugnant in the subject or context,—

- (1) any reference to a place belonging to His Majesty includes a place belonging to any department of the Government, whether the place is or is not actually vested in His Majesty.
- (2) expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch,

Act XV of 1889 has been declared in force in Upper Burma (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), printed, Burma Code, Ed. 1899.

It had been previously extended there under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), see Burma Gazette, 1893, Pt. I, u. 154.

Act V of 1904 extends to Upper Burma, *proprio vigore*.

Act XV of 1889 has been declared in force in British Baluchistan, by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1900.

The expression "His Majesty" was substituted throughout this Act for the expression "Her Majesty" by s. 6 of the Indian Official Secrets (Amendment) Act, 1904 (V of 1904).

plan, model or information itself or the substance or effect thereof only be communicated :

(3) "document" includes part of a document :

(4) "model" includes design, pattern and specimen :

(5) "Sketch" includes any photograph or other mode of representation of any place or thing :

* * *

(6) "office under His Majesty" includes any office or employment in or under any department of the Government :* and

(7) "civil affairs" means affairs—

(a) affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State, or

(b) affecting the relations of the Governor General in Council with any Native State in India, or relating to the public debt or the fiscal arrangements of the Government of India or any other important matters of State, where these affairs are of

* The word "and" between clause (5) and (6) was repealed, while the word "and" at the end of clause (6) and clause (7) were added at the end of s. 2, by s. 2 of the Indian Official Secrets (Amendment) Act, 1904 (V of 1904).

such a confidential nature that the public interest would suffer by their disclosure.

3. (1) (a) Where a person for the purpose of wrongfully obtaining information— Disclosure of information.

(i) enters or is in any part of a place belonging to His Majesty, being a fortress, arsenal, factory, dockyard, camp, ship * * * or other like place, in which part he is not entitled to be, or,

(ii) when lawfully or unlawfully in any such place as aforesaid, *[or in any office belonging to His Majesty] either obtains *[or attempts to obtain] any document, sketch, plan, model or knowledge of †[any naval, military or civil affair of His Majesty] which he is not entitled to obtain, *[or any copy of any such document, sketch, plan or model] or takes *[or attempts to take] without lawful authority any sketch or plan, or,

(iii) when outside any fortress, arsenal, factory, dockyard or camp be-

* The word "Office" was repealed by s. 3 (a) of the Indian Official Secrets (Amendment) Act, 1904 (V of 1904).

† These words were inserted, and the words "any naval, military or civil affair of His Majesty" were substituted for the word "anything", by s. 3 (b) of the Indian Official Secrets (Amendment) Act, 1904 (V of 1904).

longing to His Majesty, takes or attempts to take without authority given by or on behalf of His Majesty any sketch or plan of that fortress, arsenal, factory, dock-yard or camp, or

(b) where a person knowingly having possession of, or control over, any such document, sketch, plan, model or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, * [in the public interest], to be communicated at that time, or

(c) where a person after having been entrusted in confidence by some officer under His Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the † [naval, military or civil] affairs of His Majesty, wilfully and in

* These words were substituted for the words "in the interest of the State", by s. 3 (e) of Act V of 1904.

† These words were substituted for the words "naval or military," by s. 3 (c) of the Indian Official Secrets (Amendment) Act, 1904 (V of 1904).

breach of such confidence communicates the same when *[in the public interest] it ought not to be communicated,

he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both ;

†(2) Where a person commits any act specified in clauses (i), (ii) and (iii) of sub-section (1), sub-head (a), without lawful authority or permission (the proof of which authority or permission shall be upon him), the Court may presume that he has committed such act for the purpose of wrongfully obtaining information ; and

‡[(3)] Where a person having possession of any document, sketch, plan, model or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to His Majesty, or to the *[naval, military or civil] affairs of His Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, †[in the public interest,] to be communicated at that time, he shall be liable to the same punishment as if he committed an offence under the foregoing provisions of this section.

‡[(4)] Where a person commits any act declared by this section to be an offence, he shall,

* See first footnote on preceding page.

† Sub-section (2) was inserted, and the original sub-sections (2) & (3) renumbered as (3) & (4), by s. 3 (d) of Act V of 1904.

if he intended to communicate to a foreign State any information, document, sketch, plan, model or knowledge obtained or taken by him, or entrusted to him as aforesaid, or if he communicates the same to any agent of a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years.

Breach of
official trust.

4. (1) Where a person, by means of his holding or having held an office under His Majesty, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model or information to any person to whom the same ought not,* * * *
in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust.

(2) A person guilty of a breach of official trust shall—

(a) if the communication was made or attempted to be made to a foreign State, be punished with transportation for life or for any term not less than five years, or with im-

* The words "in the interest of the State, or otherwise," were repealed by s. 4 of the Indian Official Secrets (Amendment) Act, 1904 (V of 1904).

prisonment for a term which may extend to two years, and

- (b) in any other case be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) This section shall apply to a person holding a contract with any department of the Government, or with the holder of any office under His Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under His Majesty.

5. *(1) Notwithstanding anything in the Code of Criminal Procedure, 1898,† every offence against this Act committed in relation to any fortress, arsenal, factory, dockyard, camp or ship belonging to His Majesty, or in relation to the naval or military affairs of His Majesty, shall, for the purposes of the said Code, be deemed to be cognizable :

Certain offences under Act declared cognizable.

Provided that a person accused of any such offence shall not be released on bail unless on the order of a Magistrate of the first class.

* Sections 5, 6 and 7 were substituted for the original section 5, by s. 5 of Act V of 1904.

† See now the revised edition of the Code, as modified up to 1st April, 1903.

(2) Every other offence against this Act shall be non-cognizable.

Procedure
after arrest
on charge
of certain
offences
punishable
under Act.
V of 1898.
XLV of
1860.

*6. (1) Any person, being a public servant as defined in the Indian Penal Code, may arrest any person who in his view commits any of the offences described in section 5, sub-section (1), and any such person, or any police-officer who has arrested any person on a charge of any such offence, and any police-officer to whom any person arrested on any such charge has been made over, shall take or send him before the officer for the time being in command or charge of the fortress, arsenal, factory, dock-yard, camp or ship, or of the nearest military station, or before a Magistrate of the first class.

(2) Where any person has been taken or sent before the commanding or other officer in accordance with sub-section (1), such officer may, if he thinks fit, discharge such person, but, if he does not discharge him, shall, without unnecessary delay, take or send him to the nearest police-station or to any Magistrate of the first class.

V of 1898.

(3) Where any person has been taken or sent to a police-station or to a Magistrate under sub-section (2), the provisions of the Code of Criminal Procedure, 1898, shall, save as otherwise provided by section 7, apply to him as though he had been taken to such police-station or Magistrate without being taken or sent before the commanding or other officer.

* See first footnote on preceding page.

† 7. (1) No Magistrate of the second class shall have jurisdiction to try any person for an offence against this Act. Restriction on trial of offences.

(2) No Court shall proceed to the trial of any person for an offence against this Act, except with the consent of the Local Government or the Governor General in Council.

NOTIFICATION No. 2651-I., DATED THE 25TH JUNE, 1891.

An order respecting the publication of newspapers and other printed works in places administered by the Governor General in Council, but not forming part of British India.

Whereas some misapprehension has hitherto existed as to the regulations in force in territory under the administration of the Governor General in Council, but beyond the limits of British India, with reference to newspapers published within such territory, the Governor General in Council has been pleased to make the following orders:—

1. No newspaper or other printed work, whether periodical or other, containing public news or comments upon public news, shall, without the written permission for the time being in force of the Political Agent, be edited, printed or published after the first day of August, 1891, in any local area administered by the Governor General in Council, but not forming part of British India. Press restrictions in ceded jurisdiction in Native States.

* See first footnote on page 157.

2. If after the day aforesaid any person shall, without such permission as aforesaid, edit, print or publish any such newspaper or other work as aforesaid in any such local area as aforesaid, the Political Agent may, by order in writing—

- (a) require him to leave such local area within seven days from the date of such order, and
- (b) prohibit him from re-entering such local area without the written permission of the Political Agent.

ACT No. VII OF 1908.*

An Act for the prevention of incitements to murder and to other offences in newspapers.

Whereas it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; it is hereby enacted as follows :—

Short title
and extent.

1. (1) This Act may be called the Newspapers (Incitements to Offences) Act, 1908.

(2) It extends to the whole of British India.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “Magistrate” means a District Magistrate or Chief Presidency Magistrate :

* 8th June, 1908. For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. IV, p. 172, and for Proceedings in Council, see *ibid*, 1908, Pt. VI, p. 132.

(b) "Newspaper" means any periodical work containing public news or comments on public news :

(c) "Printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

(2) Save as herein otherwise provided all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the Code of* Criminal Procedure, 1908. V of 1898.

3. (1) In cases where, upon application Power to forfeit printing presses in certain cases. made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement to murder or to any offence under the Explosive Substances VI of 1908. Act, 1908,† or to any act of violence, such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the

* General Acts, Vol. V.

† General Acts, Vol. VI.

order, to show cause why the order should not be made absolute.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under Section 5 of the †Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

XXV of
1867.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1898.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.

4. (1) The Magistrate may by warrant empower any Police-officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

Power to
seize.

(a) where the newspaper specified in such warrant is printed or published, or

(b) where any such property may be or may be reasonably suspected to be, or

(c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search-warrants by the *Code of Criminal Procedure, V of 1898. 1898.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within

Appeal.

fifteen days from the date when such order is made absolute.

Bar of
other
proceedings.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

Power to
annul
declaration
under
Press and
Registration
of Books
Act, 1867.

XXV of
1867.

7. Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the *Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.

Penalty.

8. Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the †Press and Registration of Books Act, 1867.

XXV of
1867.

Application
of Code of
Criminal
Procedure.

V of 1898.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the ‡Code of Criminal Procedure, 1898.

Operation
of other
laws not
barred.

10. No proceedings taken under this Act shall operate to prevent any person from being

* General Acts, Vol. I.

† General Acts, Vol. I.

‡ General Acts, Vol. V.

prosecuted for any act which constitutes an offence under any other law.

ACT NO. XIV OF 1908. *

An Act to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace : It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Criminal Law Amendment Act, 1908.

(2) It extends to the Provinces of Bengal and of Eastern Bengal and Assam ; but the Governor General in Council may, at any time, by notification in the *Gazette of India*, extend the whole or any Part thereof to any other Province. Short title
and extent.

(3) When extending Part I to any province under sub-section (2) the Governor General in Council may declare the operation of the provisions of that Part relating to the constitution of the Special Bench to be subject to such modifications as may in the opinion of the Governor General in Council be necessary to adapt those provisions to the circumstances of that Province.

* Passed by the Governor General of India in Council.
Received the assent of the Governor General on the 11th December, 1908.

PART I.

SPECIAL PROCEDURE.

Application
of Part.

2. (1) Where a Magistrate has taken cognizance of any offence specified in the schedule, and it appears to the Governor General in Council or to the Local Government that in the interests of peace and good order the provisions of this Part should be made to apply to proceedings in respect of such offence, the Governor General in Council, or the Local Government, with the previous sanction of the Governor General in Council, may make an order in writing to that effect and may by such order direct that the provisions of this Part shall apply to such proceedings.

V of 1898.

(2) No order shall be made under subsection (1) in any case in which an order of commitment to the High Court or Court of Session has been made under the Code of Criminal Procedure, 1898; but, save as aforesaid, an order may be made in respect of any offence whether committed before or after the commencement of this Act, or, in the case of a Province to which this Part is extended under section I, before or after such extension.

Inquiry by
Magistrate.

3. (1) On receipt of an order under section 2 the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case has been transferred, shall proceed to inquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in

the Schedule, and shall for that purpose record on oath the evidence of all such persons as may be produced in support of the prosecution, and may record any statement of the accused if voluntarily tendered by him.

(2) Where before the commencement of proceedings under this Act the evidence of a witness has been recorded under the Code of Criminal Procedure, 1898, in the course of an inquiry into the same offence as that to which such proceedings relate, such evidence may be treated for the purposes of this Act as if it had been taken under sub-section (1). V of 1898.

4. The accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during any such inquiry, nor shall any person have any right of access to the Court of the Magistrate while he is holding such inquiry. Inquiry to be ex parte

5. When the evidence referred to in section 3 has been taken, the Magistrate shall, if he finds that it is not sufficient to put the accused upon his trial for an offence specified in the Schedule, record his reasons and discharge the accused, unless it appears to the Magistrate that the accused should be tried or committed for trial under the provisions of the Code of Criminal Procedure, 1898, for any other offence, in which case the Magistrate shall proceed accordingly. When accused person to be discharged. V of 1898.

6. When upon such evidence being taken

Power to
send
accused
for trial.

the Magistrate is satisfied that it is sufficient to put the accused upon his trial for an offence specified in the Schedule, he shall—

- (a) frame a charge under his hand declaring with what offence the accused is charged;
- (b) make an order directing that the accused be sent to the High Court for trial; and
- (c) cause the accused to be supplied with a copy of the order and of the charge and of the evidence taken under section 3.

Joinder of
charges.

7. In framing any charge under section 6 the Magistrate may also frame a charge for any offence not specified in the Schedule with which the accused may be charged at the same trial, and the procedure of this Act shall apply to any such charge.

Charge, etc.,
to be
forwarded
to High
Court.

8. When an order for trial has been made under section 6, the Magistrate shall send the order together with the charge, the record of inquiry and anything which is to be produced in evidence to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Power to
summon
supple-
mentary
witnesses.

9. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the order for trial and before the commencement of the trial.

(2) When the Magistrate examines witnesses under sub-section (1), he shall forthwith

cause the accused to be supplied with a copy of the evidence of such witnesses.

10. The accused may at any time before his trial give to the Clerk of the Crown or other officer as aforesaid a list of the persons whom he wishes to be summoned to give evidence on his trial. Witnesses
for defence.

11. (1) All persons sent for trial to the High Court under this Act shall be tried by a Special Bench of the Court composed of three Judges. Procedure
in High
Court.

(2) No trial before the Special Bench shall be by jury.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

12. No person who has been remanded to custody in the course of proceedings under this Act shall be released on bail under the provisions of section 497 of the Code of Criminal Procedure, 1898, if there appear to be sufficient grounds for further inquiry into the guilt of such person. Bail.

V of 1898.

13. Notwithstanding any thing contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his Special
rule of
evidence.
I of 1872.

death or absence has been caused in the interests of the accused.

Procedure.

V of 1898.

14. (1) The provisions of the Code of Criminal Procedure, 1898, shall not apply to proceedings taken under this Part in so far as they are inconsistent with the special procedure prescribed in this Part.

(2) When holding a trial under section II, the Special Bench shall apply the provisions of Chapter XXIII of the said Code with such modifications as may appear necessary to adapt those provisions to the case of a trial before the High Court without a jury.

PART II.

UNLAWFUL ASSOCIATIONS.

Definitions.

15. In this Part—

(1) “association” means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) “unlawful association” means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by the Governor General in Council under the powers hereby conferred.

16. If the Governor General in Council is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Governor General in Council may, by notification in the official Gazette, declare such association to be unlawful.

Power to
declare
association
unlawful

17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Penalties.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

18. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

Continuance
of asso-
ciation.

THE SCHEDULE.

(See Section 3.)

1. Any offence under the following sections of the Indian Penal Code, namely :—

Chapter VI, sections 121, 121A, 122, 123 and 124.

Chapter VII, sections 131 and 132.

Chapter VIII, section 148.

Chapter XVI, sections 302, 304, 307, 308, 326, 327, 329, 332, 333, 363, 364, 365 and 368.

Chapter XVII, sections 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459 and 460.

Chapter XXII, section 506.

2. Any offence under the Explosive Substances Act, 1908; and

3. Any attempt to commit or any abetment of any of the above offences.

ACT No. I OF 1910.*

An Act to provide for the better control of the Press.

Whereas it is necessary to provide for the better control of the Press; it is hereby enacted as follows :—

* 9th February, 1910. For Statement of Objects and Reasons, see *The Gazette of India*, 1910, Pt. V, p. 13; for Report of Select Committee, see *ibid*, p. 15; and for Proceedings in Council, see *ibid*, Pt. VI, pp. 19 and 28.

1. (1) This Act may be called the Indian ^{Short title} Press Act, 1910. ^{and extent.}

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

2. In this Act, unless there is anything ^{Definitions.} repugnant in the subject or context,—

(a) “Book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed :

(b) “Document” includes also any painting, drawing or photograph or other visible representation :

(c) “High Court” means the highest Civil Court of Appeal for any local area except in the case of the provinces of Ajmer-Merwara and Coorg where it means the High Court of Judicature for the North-Western Provinces and the High Court of Judicature at Madras respectively :

(d) “Magistrate” means a District Magistrate or Chief Presidency Magistrate :

(e) “Newspaper” means any periodical work containing public news or comments on public news : and

(f) “Printing-press” includes all engines,

machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

Deposit of
security by
keepers of
printing-
presses.
XXV of
1867.

3. (1) Every person keeping a printing-press who is required to make a declaration under section 4 of the Press and Registration of Books Act, 1867, shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India :

Provided that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that any printing-press kept in any place in the territories under its administration, in respect of which a declaration was made prior to the commencement of this Act under section 4 of the Press and Registration of Books Act, 1867,* is used for any of the purposes described in section 4, sub-section (1), the Local Government may, by notice in writing, require the keeper of such press to deposit with the Magistrate within whose jurisdiction the press is

XXV of
1867.

* General Acts, Vol. I.

situated security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

4. (1) Whenever it appears to the Local Government that any printing-press in respect of which any security has been deposited as required by section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise—

Power to declare security forfeited in certain cases.

- (a) to incite to murder or to any offence under the Explosive Substances Act, 1908,* or to any act of VI of 1908. violence, or
- (b) to seduce any officer, soldier or sailor in the Army or Navy of His Majesty from his allegiance or his duty, or
- (c) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any Native Prince or Chief under the suzerainty of His Majesty, or any class or sec-

* General Acts, Vol. VI.

tion of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government or any such Prince or Chief, or

- (d) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or
- (e) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order or
- (f) to convey any threat of injury to a public servant, or to any person in whom that public servant is believed to be interested, with a view to inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of his public functions,

the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above, declare the security deposited in respect of such press and all copies of such

newspaper, book or other document wherever found to be forfeited to His Majesty.

Explanation I.—In clause (c) the expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation II.—Comments expressing disapproval of the measures of the Government or of any such Native Prince or Chief as aforesaid with a view to obtain their alteration by lawful means, or of the administrative or other action of the Government or of any such Native Prince or Chief or of the administration of justice in British India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (c).

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867,* shall be deemed to be annulled. XXV of 1867.

5. Where the security given in respect of any press has been declared forfeited under section 4, every person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867,† shall deposit with the Magistrate before whom such declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may Deposit of further security.
XXV of 1867.

* General Acts, Vol. I.

† General Acts, Vol. I.

think fit to require, in money or the equivalent thereof in securities of the Government of India.

Power to declare further security, printing-press and publications forfeited.

6. If after such further security has been deposited the printing-press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may by notice in writing to the keeper of such printing-press, stating or describing such words, signs or visible representations, declare—

- (a) the further security so deposited,
 - (b) the printing-press used for the purpose of printing or publishing such newspaper, book or other document or found in or upon the premises where such newspaper, book or other document is, or at the time of printing the matter complained of was printed, and
 - (c) all copies of such newspaper, book or other document wherever found,
- to be forfeited to His Majesty.

Issue of search-warrant.

7. (1) Where any printing-press is or any copies of any newspaper, book or other document are declared forfeited to His Majesty under this Act, the Local Government may direct any Magistrate to issue a warrant empowering any police-officer, not below the rank of a Sub-Inspector, to seize and detain any property

ordered to be forfeited and to enter upon and search for such property in any premises—

- (i) where any such property may be or may be reasonably suspected to be, or
- (ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898.*

V of 1898.

8. (1) Every publisher of a newspaper who is required to make a declaration under section 5 of the Press and Registration of Books Act, 1867,† shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India :

Deposit of security by publisher of a newspaper.
XXV of 1867.

Provided that if the person registered under the said Act as printer of the newspaper is also registered as the keeper of the press where the newspaper is printed, the publisher shall not be

* General Acts, Vol. V.

† General Acts, Vol. I.

required to deposit security so long as such registration is in force :

Provided further that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that a newspaper published within its territories, in respect of which a declaration was made by the publisher thereof prior to the commencement of this Act, under section 5 of the Press and Registration of Books Act, 1867,* contains any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing, require the publisher to deposit with the Magistrate within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

XXV of
1867.

Power to
declare
security
forfeited
in certain
cases.

9. (1) If any newspaper in respect of which any security has been deposited as required by section 8 contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher

* General Acts, Vol. I.

of such newspaper, stating or describing such words, signs or visible representations, declare such security and all copies of such newspaper, under section 5 of the Press and Registration of Books Act, 1867, whenever found, to be forfeited to His Majesty.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867,* shall be ^{XXV of 1867.} deemed to be annulled.

10. Where the security given in respect of any newspaper is declared forfeited, any person making a fresh declaration under section 5 of the Press and Registration of Books Act, 1867, as publisher of such newspaper, or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India. ^{Deposit of further security.}

11. If after such further security has been deposited the newspaper again contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to ^{Power to declare further security and newspapers forfeited.}

* General Acts, Vol. I.

the publisher of such newspaper, stating or describing such words, signs, or visible representations, declare—

- (a) the further security so deposited, and
- (b) all copies of such newspaper wherever found to be forfeited to His Majesty.

Power to declare certain publications forfeited and to issue search-warrants for same.

12. (1) Where any newspaper, book or other document wherever printed appears to the Local Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found, and any Magistrate may by warrant authorize any police-officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where the newspaper, book or other document may be or may be reasonably suspected to be.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898.

V of 1898.

Power to detain packages

13. The Chief Customs-officer or other officer authorized by the * Local Government in

* For notification by the Government of Eastern Bengal and Assam, authorizing all District Magistrates under the section.

this behalf may detain any package brought, whether by land or sea, into British India which he suspects to contain any newspapers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the † Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

14. No newspaper printed and published in British India shall be transmitted by post unless the printer and publisher have made a declaration under section 5 of the Press and Registration of Books Act, 1867‡, and the publisher has deposited security when so required under this Act.

15. Any officer in charge of a post-office or authorized by the Post-Master General in this behalf may detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

- (a) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1), or

see Eastern Bengal and Assam Gazette Extraordinary, dated 28th February, 1910.

† For notification by the Government of Eastern Bengal and Assam, see Eastern Bengal and Assam Gazette Extraordinary, dated 28th February, 1910.

‡ General Acts, Vol. I.

(b) any newspaper in respect of which the declaration required by section 5 of the Press and Registration of Books Act, 1867, has not been made, or the security required by this Act has not been deposited by the publisher thereof,

and shall deliver all such articles to * such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

Copies of
newspapers
printed in
British India
to be
delivered
gratis to
Government.

16. (1) The printer of every newspaper in British India shall deliver at such place and to such officer as the †Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.

(2) If any printer of any such newspaper neglects to deliver copies of the same in compliance with sub-section (1), he shall, on the complaint of the officer to whom the copies should have been delivered or of any person

* For notification by the Government of Eastern Bengal and Assam, see Eastern Bengal and Assam Gazette Extraordinary, dated 28th February, 1910.

† For notification by—

- (1) Government of Madras, see Fort St. George Gazette, 1910, Pt. I, p. 266.
- (2) Chief Commissioner, Central Provinces, see Central Provinces Gazette, 1910, Pt. I, p. 112.
- (3) Chief Commissioner, Ajmer-Merwara, see Gazette of India, 1910, Pt. II, p. 932.
- (4) Chief Commissioner, North West Frontier Province, see Gazette of India, 1910, Pt. II, p. 368.

authorized by that officer in this behalf, be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default.

17. Any person having an interest in any property in respect of which an order of forfeiture has been made under section 4, 6, 9, 11, or 12 may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the newspaper, book or other document in respect of which the order was made did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1).

Application to High Court, to set aside order of forfeiture.

18. Every such application shall be heard and determined by a special Bench of the High Court composed of three Judges, or where the High Court consists of less than three Judges, of all the Judges.

Hearing by Special Bench.

19. (1) If it appears to the Special Bench that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order of forfeiture.

Order of Special Bench setting aside forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority (if any) of those Judges.

(3) Where there is no such majority which

concurs in setting aside the order in question, such order shall stand.

Evidence
to prove
nature or
tendency of
newspapers.

20. On the hearing of any such application with reference to any newspaper, any copy of such newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper which are alleged to be of the nature described in section 4, sub-section (1).

Procedure
in High
Court.

21. Every * High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

Jurisdiction
barred.

22. Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court,

* For rules by the—

- (1) High Court at Calcutta, see Gazette of India, 1910, Pt. II, p. 407.
- (2) High Court at Allahabad, see U. P. Gazette, 1910, Pt. II, p. 159A.
- (3) High Court at Bombay, see Bombay Government Gazette, 1910, Pt. I, p. 549.
- (4) Judicial Commissioner of Oudh, see U. P. Gazette, 1910, Pt. II, p. 820.

except the High Court on such application as aforesaid, and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.

23. (1) Whoever keeps in his possession a press for the printing of books or papers without making a deposit under section 3 or section 5, when required so to do, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4 of the Press and Registration of Books Act, 1867.*

Penalty for keeping press or publishing newspaper without making deposit.

XXV of 1867.

(2) Whoever publishes any newspaper without making a deposit under section 8 or section 10, when required so to do, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Press and Registration of Books Act, 1867.

24. Where any person has deposited any security under this Act and ceases to keep the press in respect of which such security was deposited, or being a publisher, makes a declaration under section 8 of the Press and Registration of Books Act, 1867, he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security; and

Return of deposited security in certain cases

thereupon such security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person.

Service of
notices.

25. Every notice under this Act shall be sent to a Magistrate, who shall cause it to be served in the manner provided for the service of summonses under the Code of Criminal Procedure, 1898 *.

V of 1898.

Operation
of other
laws not
barred.

26. Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act.

ACT NO. X OF 1911.†

An Act to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity; It is hereby enacted as follows :—

* General Acts, Vol. V.

† Passed by the Governor General of India in Council. Received the assent of the Governor General on the 22nd March, 1911.

1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1911. Short title and extent.

(2) It extends to the whole of British India, but shall have operation only in such Provinces or parts of Provinces as the Governor General in Council may from time to time notify in the *Gazette of India*.

2. (1) The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area. Power of Local Government to notify proclaimed areas.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government, with the previous sanction of the Governor General in Council, from making any further notifications in respect of the same area from time to time as it may think fit.

3. (1) In this Act, the expression "public meeting" means a meeting which is open to the public or any class or portion of the public. Definition.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise. Notice to be given of public meetings.

4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement or for the exhibition or distribution of any writing or Power of Magistrate to cause report to be taken.

printed matter relating to any such subject shall be held in any proclaimed area—

Exception.

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously; or

Power to prohibit public meetings.

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police, as the case may be

(2) The District Magistrate or any Magistrate of the first class authorized by the District Magistrate in this behalf may, by order in writing, depute one or more Police-officers, not being below the rank of head constable or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

(3) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority or to public meetings convened by a Sheriff or to any public meetings or class of public meetings exempted for that purpose by the Local Government by general or special order.

5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which

public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

6. (1) Any person concerned in the pro- Penalties.
motion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Any public meeting which has been XLV of 1860.
prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898.

7. Whoever, in a proclaimed area, in a Penalty for delivery of speeches in public places.
public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

8. No Court inferior to that of a Presidency Cognizance of offences.
Magistrate or of a Magistrate of the first Class

or Sub-divisional Magistrate shall try any offence against this Act.

VI of 1907.
XVII of
1910.

Repeals.

9. The Prevention of Seditious Meetings Act, 1907, and the Continuing Act, 1910, are hereby repealed.

ACT NO. III OF 1915.*

III of 1864.

An Act to amend the Foreigners Act, 1864.

WHEREAS it is expedient to amend the Foreigners Act, 1864; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Foreigners (Amendment) Act, 1915.

III of 1864.

Amendment
of section 1
of Act III of
1864.

2. In section 1 of the Foreigners Act, 1864, for the words "not being either a natural born subject of Her Majesty within the meaning of the Statute 3 and 4 William IV, Chapter 85, section 81, or a native of British India" the following words shall be substituted, namely :—

4 and 5 Geo.
V, c. 17.

"(a) who is not a natural born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914, or

(b) who has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India :

* Passed by the Governor General of India in Council.
Received the assent of the Governor General on the 17th March, 1915.

Provided that any British subject who under any law for the time being in force in British India, ceases to be a British subject, shall thereupon be deemed to be a foreigner."

3. After section 3 of the Foreigners Act, 1864, the following section shall be inserted, namely :—

III of 1864.
Insertion of
new section
3A, Act III
of 1864.

"3A (1). Whenever in a Presidency town the Commissioner of Police, or elsewhere the Magistrate of the District, considers that the Local Government should be moved to issue an order under section 3 in respect of any foreigner who is within the limits of such Presidency town or of the jurisdiction of such Magistrate, he may report the case to the Local Government and at the same time issue a warrant for the apprehension of such foreigner.

Foreigner
may be ap-
prehended
and detained
pending
order of
removal.

(2) Any officer issuing a warrant under sub-section (1) may, in his discretion, direct by endorsement on the warrant that if such foreigner executes a bond with or without sureties for his attendance at a specified place and time, the person to whom the warrant is directed shall take such security and release such foreigner from custody.

(3) Any person executing a warrant under sub-section (1) may search for and apprehend the foreigner named in such warrant: and, subject to any direction issued under sub-section (2), shall forthwith cause such foreigner when apprehended to be produced before the officer issuing the warrant.

(4) When a foreigner for whose apprehension a warrant has been issued under sub-section (1) is produced or appears before the officer issuing such warrant, such officer may direct him to be detained in custody pending the orders of the Local Government, or may release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained.

(5) Any officer who has, in accordance with the provisions of sub-section (4), ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the Local Government. On the receipt of a report under this sub-section the Local Government shall without delay either direct that the foreigner be discharged or make an order for the removal of such foreigner in accordance with the provisions of section 3."

ACT NO. IV OF 1915.*

An Act to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences.

WHEREAS owing to the existing state of war it is expedient to provide for special measures

* Passed by the Governor General of India in Council. Received the assent of the Governor General on the 19th March, 1915.

to secure the public safety and the defence of British India and for the more speedy trial of certain offences; It is hereby enacted as follows :—

1. (1) This Act may be called the Short title, extent and duration. Defence of India (Criminal Law Amendment) Act, 1915.

(2) It extends to the whole of British India including British Baluchistan, the Sonthal Parganas and the district of Angul.

(3) This section and section 2 shall come into operation at once. The Governor General in Council may, by notification in the *Gazette of India*, direct that the rest of the Act shall come into operation in any province or part thereof on such date as may be specified in such notification.

(4) This Act shall be in force during the continuance of the present war and for a period of six months thereafter :

Provided that the expiration of this Act shall not affect the validity of anything done in pursuance of it and any person convicted under this Act may be punished as if it had continued in force, and all prosecutions and other legal proceedings pending under this Act at the time of the expiration thereof may be completed and carried into effect, and the sentences carried into execution as if this Act had not expired.

2. (1) The Governor General in Council Power to make rules. may make rules for the purpose of securing the public safety and the defence of British India and as to the powers and duties of public servants

and other persons in furtherance of that purpose.

In particular and without prejudice to the generality of the foregoing power, rules under this section may be made—

- (a) to prevent persons communicating with the enemy or obtaining information which may be used for that purpose ;
- (b) to secure the safety of His Majesty's forces and ships and to prevent the prosecution of any purpose likely to jeopardise the success of the operations of His Majesty's forces or the forces of His Allies or to assist the enemy ;
- (c) to prevent the spread of false reports or reports likely to cause disaffection or alarm or to prejudice His Majesty's relations with Foreign Powers or to promote feelings of enmity and hatred between different classes of His Majesty's subjects ;
- (d) to empower any civil or military authority to issue such orders and take such measures as may be necessary to secure the safety of railways, ports, dockyards, telegraphs, post offices, works for the supply of gas, electric light or water, sources of water-supply, all means of communication and any

areas which may be notified by such civil or military authority, as areas which it is necessary to safeguard in the public interest ;

- (e) to enable any naval or military authority to take possession of any property, moveable or immovable, for naval or military purposes, and to issue such orders and do such acts in respect of any property as may be necessary to secure the public safety or the defence of British India or any part thereof ;
- (f) to empower any civil or military authority where, in the opinion of such authority, there are reasonable grounds for suspecting that any person has acted, is acting or is about to act in a manner prejudicial to the public safety, to direct that such person shall not enter, reside or remain in any area specified in writing by such authority, or that such person shall reside and remain in any area so specified, or that he shall conduct himself in such manner or abstain from such acts, or take such order with any property in his possession or under his control, as such authority may direct ;

- (g) to prohibit or regulate the possession of explosives, inflammable substances, arms and all other munitions of war ;
- (h) to prohibit anything likely to prejudice the training or discipline of His Majesty's forces and to prevent any attempt to tamper with the loyalty of persons in the service of His Majesty or to dissuade persons from entering the military or police service of His Majesty ;
- (i) to empower any civil or military authority to enter and search any place if such authority has reason to believe that such place is being used for any purpose prejudicial to the public safety or to the defence of British India and to seize anything found there which he has reason to believe is being used for any such purpose ;
- (j) to provide for the arrest of persons contravening or reasonably suspected of contravening any rule made under this section and prescribing the duties of public servants and other persons in regard to such arrests ;
- (k) to prescribe the duties of public servants and other persons as to pre-

venting any contravention of rules made under this section and to prohibit any attempt to screen persons contravening any such rule from punishment; and

- (1) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered.

(2) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, or if the intention of the person so contravening any such rule or order is to assist the King's enemies or to wage war against the King, may provide that such contravention shall be punishable with death, transportation for life or imprisonment for a term which may extend to ten years, to any of which punishments fine may be added.

(3) All rules made under this section shall be published in the *Gazette of India* and shall thereupon have effect as if enacted in this Act.

3. (1) The Local Government may by order in writing direct that any person accused of anything which is an offence in virtue of any rule made under section 2, or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, or of criminal conspiracy to commit,

Power of
Local
Government
to direct
accused
person to
be tried
by Commis-
sioners.

or of abetting, or of attempting to commit or abet any such offence shall be tried by Commissioners appointed under this Act.

(2) Orders under sub-section (1) may be made in respect of all persons accused of any offence referred to in that sub-section, or in respect of any class of person so accused, or in respect of persons or classes of persons accused of any particular offence therein referred to or accused of any class of such offences.

Act V of
1898.

XIV of 1908.

(3) No order under sub-section (1) shall be made in respect of or be deemed to include any person who has been committed under the Code of Criminal Procedure, 1898, for trial before a High Court, or in whose case an order for trial has been made under section 6 of the Indian Criminal Law Amendment Act, 1908, but, save as aforesaid, an order under that sub-section may be made in respect of or may include any person accused of any offence referred to therein whether such offence was committed before or after the commencement of this Act.

Appoint-
ment and
qualifications
of Commis-
sioners.

4. (1) Commissioners for the trial of persons under this Act shall be appointed by the Local Government.

(2) Such Commissioners may be appointed for the whole province or any part thereof or for the trial of any particular accused person or class of accused persons.

(3) All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who have served as Sessions

Judges or Additional Sessions Judges for a period of not less than three years, or are persons qualified under section 2 of the Indian High Courts Act, 1861, for appointment as Judges of a High Court or are advocates of a Chief Court or pleaders of ten years' standing.

5. (1) Commissioners appointed under this Act may take cognizance of offences without the accused being committed to them for trial, and, in trying accused persons, shall, subject to any rules made by the Local Government in this behalf, follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by magistrates :

24 and 25
Vict., c. 104.

Procedure
of Commis-
sioners.

Act V of
1898.

Provided that such Commissioners shall make a memorandum only of the substance of the evidence of each witness examined, and shall not be bound to adjourn any trial for any purpose unless such adjournment is in their opinion necessary in the interests of justice.

(2) In the event of any difference of opinion between the Commissioners the opinion of the majority shall prevail.

6. (1) The judgment of Commissioners appointed under the Act shall be final and conclusive and such Commissioners may pass upon any person convicted by them any sentence authorised by law for the punishment of the offence of which such person is convicted and no order of confirmation shall be necessary in the case of any sentence passed by them.

Powers of
Commis-
sioners.

(2) If in any trial under this Act it is proved

that the accused person has committed any offence whether referred to in section 3 or in any order under that section or not, the Commissioners may convict such accused person of such offence and pass any sentence authorised by law for the punishment thereof.

Act V of
1898.

Applica-
tion of
Criminal
Procedure
Code
subject to
modifica-
tions to
proceedings
under this
Act.

7. The provisions of the Code of Criminal Procedure, 1898, so far as they are inconsistent with the special procedure prescribed by or under this Act, shall not apply to the proceedings of Commissioners appointed under this Act, but save as otherwise provided, that Code shall apply to such proceedings and the Commissioners shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Act V of
1898.

Exclusion
of inter-
ference of
other
criminal
courts.

8. (1) Notwithstanding the provisions of the Code of Criminal Procedure, 1898, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of Commissioners appointed under this Act, and no Court shall have authority to revise any such order or sentence, or to transfer any case from such Commissioners, or to make any order under section 491 of the Code of Criminal Procedure, 1898, or have any jurisdiction of any kind in respect of any proceedings under this Act.

Act V of
1898.

(2) Nothing in sub-section (1) shall be deemed to affect the power of the Governor General in Council or the Local Government to make orders under section 401 or 402 of the Code

of Criminal Procedure, 1898, in respect of ^{Act V of 1898.} persons sentenced by Commissioners under this Act.

9. Notwithstanding anything contained in ^{I of 1872.} the Indian Evidence Act, 1872, where the statement of any person has been recorded by a ^{Special rule of evidence.} Magistrate, such statement may be admitted in evidence in any trial before Commissioners appointed under this Act if such person is dead or cannot be found or is incapable of giving evidence, and the Commissioners are of opinion that such death, disappearance or incapacity has been caused in the interest of the accused.

10. The Local Government may, by notification in the local official Gazette, make rules ^{Rule-making powers of Local Government.} providing for—

- (i) the times and places at which Commissioners appointed under this Act may sit ;
- (ii) the procedure of such Commissioners including the appointment and powers of their President, and the procedure to be adopted in the event of any Commissioner being prevented from attending throughout the trial of any accused person ;
- (iii) the manner in which prosecutions before such Commissioners shall be conducted, and the appointment and powers of persons conducting such prosecution ;

- (iv) the execution of sentences passed by such Commissioners ;
- (v) the temporary custody or release on bail of persons referred to or included in any order made under sub-section (1) of section 3, and for the transmission of records to the Commissioners ; and
- (vi) any matter which appears to the Local Government to be necessary for carrying into effect the provisions of the Act relating or ancillary to trials before Commissioners.

Savings.

11. No order under this Act shall be called in question in any court, and no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

ACT NO. III OF 1916.*

An Act to provide for the trial, by Court-martial, of foreigners for offences against the Defence of India Rules.

WHEREAS it is expedient to provide for the trial, by Court-martial, of foreigners for offences against the Defence of India Rules ; It is hereby enacted as follows :—

* Passed by the Indian Legislative Council. Received the assent of the Governor General on the 8th March, 1916.

1. (1) This Act may be called the ‘‘Foreigners’ (Trial by Court-martial) Act, 1916.’’

Short title,
extent and
duration.

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas, and the district of Angul.

(3) It shall be in force during the continuance of the present war, and for a period of six months thereafter :

Provided that the expiration of this Act shall not affect the validity of anything done in pursuance of it, and any person convicted under this Act may be punished as if it had continued in force, and all prosecutions and other legal proceedings pending under this Act at the time of the expiration thereof may be completed and carried into effect and the sentences carried into execution as if this Act had not expired.

2. In this Act—

Definitions.

(a) ‘‘British subject’’ has the same meaning as in section 27 of the British Nationality and Status of Aliens Act, 1914 :

4 & 5 Gea.
V., c. 17.

Provided that any person who holds a certificate of naturalization as a British subject granted under any Act of the Governor General in Council for the time being in force shall, for the purposes of this Act, be deemed to be a British subject.

(b) ‘‘Defence of India Rules’’ means any rules for the time being in force made under section 2 of the Defence of India (Criminal Law Amendment) Act, 1915.

IV of 1915..

(c) "Foreigner" means any person who is not a British subject.

Trial of
foreigners
contraven-
ing rules
under
section 2 of
the Defence
of India Act,
1915.

3. (1) The Governor General in Council may, by order in writing, direct that a foreigner accused of anything which is an offence in virtue of the Defence of India Rules shall be tried by Court-martial.

(2) An order made under sub-section (1) may be made in respect of all foreigners or any particular foreigner or any class of foreigners, and in respect of all offences against the said rules or any particular offence or any class of offences.

(3) An order made under sub-section (1) may be made in respect of, or include, any foreigner so accused whether such offence was committed before or after the commencement of this Act.

Procedure
on making
of order
under
section 3.

4. When an order under section 3 has been made in respect of, or includes, any foreigner, such foreigner, when so accused, may be taken into military custody, and shall, if he is already in other custody, be handed over to military custody, and shall be proceeded against and dealt with as if he was a person subject to military law in accordance with the Army Act, and as if the offence of which he is accused was an offence against military law; and may, on conviction, be sentenced to, and shall be liable to suffer, any punishment assigned by the Defence of India Rules for the offence of which he is found guilty.

44 & 45
Vict., c. 58.

Procedure
on trial.

5. The trial and all matters precedent

thereto and attendant thereon shall be held and carried out in accordance with the provisions of the Army Act and the rules for the time being in force thereunder :

Provided that the Governor General in Council may, by general or special order, modify, in such way as he may direct, any of the said provisions.

6. The Foreigners (Trial by Court-martial) Ordinance, 1916, is hereby repealed.

Repeal of
Ordinance
III of 1916.

ACT No. XI OF 1919.*

An Act to cope with anarchical and revolutionary crime.

Whereas it is expedient to make provision that the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government for the purpose of dealing with anarchical and revolutionary movements ;

And whereas the previous approval of the Secretary of State in Council has been accorded to the making of this law ; It is hereby enacted as follows :—

1. (1) This Act may be called the Anarchical and Revolutionary Crimes Act, 1919;

Short title,
extent and
duration.

* Passed by the Indian Legislative Council. Received the assent of the Governor General on the 21st March, 1919.

(2) It extends to the whole of British India ;
and

(3) It shall continue in force for three years from the date of the termination of the present war.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

“Chief Justice” means the Judge of highest rank in a High Court ;

V of 1898. “The Code” means the Code of Criminal Procedure, 1898 ;

“High Court” means the highest Court of criminal appeal or revision for any local area ;

“Scheduled offence” means any offence specified in the Schedule.

(2) All words and expressions used in this Act and defined in the Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them in the Code.

PART I.

Condition
of applica-
tion of
Part I.

3. If the Governor General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the *Gazette of India*, make a declaration to that effect, and thereupon the provisions of this Part

shall come into force in the area specified in the notification.

4. (1) Where the Local Government is of ^{Initiating of proceedings.} opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.

(2) No order under sub-section (1) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court or a Court of Session, but save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence whether such offence was committed before or after the issue of the notification under section 3.

(3) The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and all particulars within the knowledge of the prosecution of what is intended to be proved against the accused.

(4) The Chief Justice may by order require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.

Constitution
of Court.

5. Upon such service being effected, and on application duly made to him, the Chief Justice shall nominate three of the High Court Judges (hereinafter referred to as the Court) for the trial of the information, and shall fix a date for the commencement of the trial :

Provided that when the total number of Judges of the High Court does not exceed three, the Chief Justice shall nominate not more than two such Judges, and shall complete the Court by the nomination of one or, if necessary, two persons of either of the following classes, namely :—

- (a) persons who have served as permanent Judges of the High Court ; or
- (b) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court.

Place of
sitting.

6. The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable :

Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make an order to that effect, unless for reasons to be recorded in writing it thinks fit to make any other order. It shall not be necessary for the certificate of the Advocate-General to be supported

by any affidavit, nor shall he be required to state the grounds upon which such certificate was given.

7. The provisions of the Code shall apply to proceedings under this Part, in so far as the said provisions are not inconsistent with the provisions of this Part, and such proceedings shall be deemed to be proceedings under the Code, and the Court shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Application of Code of Criminal Procedure subject to this Part.

8. (1) The trial shall be commenced by the reading of the information, and thereafter the prosecutor shall state shortly by what evidence he expects to prove the guilt of the accused.

Trial.

(2) The Court shall then, subject to the provisions of this Part, in trying the accused, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

9. If a charge is framed, the accused shall be entitled to ask for an adjournment for fourteen days, or any less period that he may specify, and the Court shall comply with his request, but, subject to the adjournment provided for by this section, the Court shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice.

Adjournment.

10. The Court shall cause the evidence of each witness who is examined to be recorded in full in such manner as the Court may direct.

Record of evidence.

Prohibition
or restriction
of publica-
tion of
reports of
trial.

11. The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.

Examination
of accused.

12. (1) No questions shall be put by the Court to the accused in the course of a trial under this Part until the close of the case for the prosecution. Thereafter, and before the accused enters on his defence, the Court shall inform the accused that he is entitled, if he so desires, to give evidence on oath on his own behalf, and shall at the same time inform him that if he does so, he will be liable to cross-examination. Unless the accused then states that he desires to give evidence on oath, the Court may at any time thereafter question the accused generally on the case in accordance with the provisions of section 342 of the Code.

(2) If, when so called upon, the accused states that he desires to give evidence on oath, the Court shall not at any subsequent stage put any question to him :

Provided that if the accused does not so give evidence, then, after the witnesses for the defence have been examined, the Court may question the accused generally on the case in accordance with the provisions of the said section.

(3) The failure of the accused to give evidence on oath shall not be made the subject of

any comment by the prosecution, nor shall the Court draw any inference adverse to the accused from such failure.

(4) If the accused gives evidence on oath, the following rules shall be observed, namely :

(a) He may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

(b) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or has been charged with, any offence other than that with which he is then charged, or has a bad character, unless—

(i) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or

(ii) witnesses for the prosecution have been cross-examined with a view to establish his own good character, or he has given evidence of his good character or the nature or the conduct of the defence is such as to involve imputations on the character of the

witnesses for the prosecution,
or

(iii) he has given evidence against
any other person charged
with the same offence.

(c) Unless otherwise ordered by the Court,
he shall give his evidence from the
witness-box or other place from
which the other witnesses give their
evidence.

Right of
reply.

13. If the accused or any one of the
accused calls and examines any witness, the
right of final reply shall lie with the prosecution,
but in all other cases with the accused :

Provided that the examination of an accused
as a witness shall not of itself confer the right
of final reply on the prosecution.

Differences
of opinion.

14. In the event of any difference of
opinion among the members of the Court, the
opinion of the majority shall prevail.

Accused
may be
convicted
of any
offence
referred to
in Schedule.
Sentence.

15. At any trial under this Part the
accused may be charged with and convicted of
any offence against any provision of the law
which is referred to in the Schedule.

16. The Court may pass upon any person
convicted by it any sentence authorised by law
for the punishment of the offence of which such
person is convicted, and no order of confirma-
tion shall be necessary in the case of any sentence
passed by it :

Provided that a sentence of death shall not
be passed upon any accused person in respect

of whose guilt there is a difference of opinion among the members of the Court.

17. The judgment of the Court shall be final and conclusive and, notwithstanding the provisions of the Code or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of the Court, and no High Court shall have authority to revise any such order or sentence or to transfer any case from such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings under this Part :

Exclusion of interference of other criminal courts.

Provided that nothing in this section shall be deemed to affect the powers of the Governor General in Council or of the Local Government to make orders under section 401 or section 402 of the Code in respect of any person sentenced by the Court.

18. (1) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where—

Special rules of evidence.
I of 1872.

- (a) the statement of any person has been recorded by a Magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or
- (b) the statement of any person has been recorded by the Court, but such

person has not been cross-examined,

such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence, and it is established to the satisfaction of the Court that such death, disappearance or incapacity has been caused in the interests of the accused.

(2) Depositions recorded under section 512 of the Code may, in the circumstances specified in that section, be given in evidence at the trial of an accused under this Part.

Recall of witnesses on reconstitution of Court.

19. In case of any reconstitution of the Court during the trial, the Court so reconstituted shall, if the accused so desires, re-call and re-hear any witness who has already given evidence in the case.

Power to make rules.

20. The Chief Justice may from time to time make rules providing for—

- (1) the appointment and powers of a President of the Court, and the procedure to be adopted to complete the Court in the event of any Judge of the Court being prevented from attending throughout the trial of an accused; and
- (2) any matters (including the intermediate custody of the accused and his release on bail) which appear to him necessary for carrying into effect or supplementing

the provisions of this Part preliminary or ancillary to trials.

PART II.

21. If the Governor General in Council is satisfied that anarchical or revolutionary movements which are, in his opinion, likely to lead to the commission of scheduled offences are being extensively promoted in the whole or any part of British India, he may, by notification in the *Gazette of India*, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Condition
of applica-
tion of
Part II.

22. (1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 21, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If, after considering such opinion, the Local Government is satisfied that action under the provisions of this section is necessary, it may by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 21, give all or any of the following directions, namely: that such person—

Powers
exercisable
when Part II
is in force.

- (a) shall, within such period as may be specified in the order, execute a

bond with or without sureties undertaking, for such period not exceeding one year as may be so specified, that he will not commit, or attempt or conspire to commit, or abet the commitment of, any offence against any provision of the law which is referred to in the Schedule;

- (b) shall notify his residence and any change of residence to such authority as may be so specified;
- (c) shall remain or reside in any area in British India so specified:

Provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained;

- (d) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and
- (e) shall report himself to the officer in charge of the police-station nearest to his residence at such periods as may be so specified.

(2) Any order under clauses (b) to (e) of sub-section (1) may also be made to take effect upon default by the person concerned in complying with an order under clause (a) of that sub-section.

23. An order made under section 22 shall be served on the person in respect of whom it is made in the manner provided in the Code for service of summons, and upon such service such person shall be deemed to have due notice thereof.

Service of orders under section 22.

24. The Local Government and every officer of Government to whom a copy of any order made under section 22 may be directed by, or under the general or special authority of, the Local Government, may use all means reasonably necessary to enforce compliance with the same.

Enforcement of orders.

25. An order made under section 22 shall only continue in force for a period of one month, unless it is extended by the Local Government as hereinafter provided in this Part.

Interim nature of order made by Local Government.

26. (1) When the Local Government makes an order under section 22, such Government shall, as soon as may be, forward to the investigating authority to be constituted under this Act a concise statement in writing setting forth plainly the grounds on which the Government considered it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession relevant to the inquiry.

Reference to investigating authority.

(2) The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the

Government, appears against the person in respect of whom the order has been made. Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable :

Provided that—

- (a) nothing in this sub-section shall be deemed to entitle the person whose case is before the investigating authority to appear or to be represented before it by pleader, nor shall the Local Government be so entitled :
- (b) the investigating authority shall not disclose to the person in question any fact the communication of which might endanger the public safety or the safety of any individual :
- (c) If the person in question requests the investigating authority to secure the attendance of any person or the production of any document or thing, such authority shall, unless for reasons to be recorded in writing it deems it unnecessary

so to do, cause such person to attend or such document or thing to be produced, and for that purpose shall have all the powers conferred on a District Magistrate in respect of those matters by the Code.

(3) Subject to the provisions of sub-section (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry, such authority shall not be bound to observe the rules of the law of evidence.

(4) Any statement made to an investigating authority by any person other than the person whose case is under investigation shall be deemed to be information given to a public servant within the meaning of section 182 of the XLV of 1860 Indian Penal Code.

(5) On the completion of the inquiry, the investigating authority shall report in writing to the Local Government the conclusions at which it has arrived, and shall adduce reasons in support thereof. In so reporting the investigating authority shall state whether or not, in its opinion, the person whose case is under investigation is or has been actively concerned in any movement of the nature referred to in section 21.

(6) If the investigating authority has not completed the inquiry within the period for which the duration of the order is limited by section 25, such authority may recommend to

the Local Government that the period of duration of the order shall be extended for such period as it may consider necessary, and on such a recommendation the Local Government may extend the duration of the order accordingly.

Disposal
of report
of inves-
tigating
authority.

27. (1) On receipt of the report of the investigating authority, the Local Government may discharge the order made under section 22, or may make any order which is authorised by that section :

Provided that—

(a) any order so made shall recite the conclusions of the investigating authority as reported by that authority; and

(b) a copy of such order shall be furnished to the person in respect of whom it is made.

(2) No order made under sub-section (1) shall continue in force for more than one year from the date of the order made under section 22.

(3) On the expiry of an order made under sub-section (1), the Local Government may, if it is satisfied that such a course is necessary in the interests of the public safety, again make in respect of the person to whom such order related any order which is authorised by section 22 :

Provided that, before an order is made under this sub-section, a copy of the order which it is proposed to make shall be furnished to the person concerned, who may submit to the Local

Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for inquiry and report, and such authority, after inquiry conducted in accordance with the provisions of section 26, shall report thereon, and the Local Government shall consider such report :

Provided further that no order made under this sub-section shall continue in force for more than a year from the date on which it was made.

(4) Any order made under this section may at any time be discharged or may be altered by the substitution of any other order authorised by section 22 :

Provided that no such alteration shall have the effect of prolonging the period for which such order would have been in force.

(5) The provisions of section 24 shall apply to the enforcement of orders made under this section.

28. If any person fails to comply with, or attempts to evade, any order (other than an order to furnish security) made under section 22 or section 27, he shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both. Penalty for disobedience to order.

29. The provisions of section 514 of the Code shall apply to bonds executed under the provisions of this Part, with this modification Provisions as to bonds.

that the powers conferred by that section on the Court shall be exercisable by any District Magistrate or Chief Presidency Magistrate, on application made on behalf of the Local Government.

Investigating
authorities.

30. (1) As soon as may be after a notification has been issued bringing this Part into force, the Local Government shall appoint one or more investigating authorities for the purposes of this Part, and may appoint additional investigating authorities when necessary.

(2) Every investigating authority shall be appointed by order in writing, and shall consist of three persons, of whom two shall be persons having held judicial office not inferior to that of a District and Sessions Judge, and one shall be a person not in the service of the Crown in India.

(3) The Local Government may by like order appoint persons to fill casual vacancies occurring by reason of death, resignation of office or otherwise on any investigating authority, but in so doing shall observe the provisions of sub-section (2).

31. (1) The Local Government shall by order in writing appoint such persons as it thinks fit to be Visiting Committees to report upon the welfare and treatment of persons under restraint under this Part, and shall by rules prescribe the functions which these Committees shall exercise :

Provided that, in making such rules, provision shall be made for periodical visits to per-

sons under restraint under the provisions of this Part :

Provided further that a person in respect of whom an order has been made under section 22 or section 27 requiring him to abstain from any specified act or to report himself to the police shall not be deemed to be under restraint for the purposes of this section.

(2) All rules made under sub-section (1) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

32. (1) The Local Government may make rules prescribing the authorities before whom and the manner in which bonds under this Part shall be executed, and providing for the procedure to be followed regarding the notification of residence and reports to the police by persons in respect of whom orders have been made under section 22 or section 27.

Powers of
Local
Government
to make
rules.

(2) All rules made under sub-section (1) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

PART III.

33. If the Governor General in Council is satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent as to endanger the public safety,

Condition
of applica-
tion of
Part III.

he may, by notification in the *Gazette of India*, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

34. (1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If after considering such opinion the Local Government is satisfied that such action is necessary, it may make in respect of such person any order authorised by section 22, and may further by order in writing direct—

- (a) the arrest of any such person without warrant;
- (b) the confinement of any such person in such place and under such conditions and restrictions as it may specify :

Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894; and

- (c) the search of any place specified in the order which, in the opinion of the Local Government, has been,

is being, or is about to be, used by any such person for any purpose connected with any anarchical or revolutionary movement.

(2) The arrest of any person in pursuance of an order under clause (a) of sub-section (1) may be effected at any place where he may be found by any police-officer or by any other officer of Government to whom the order may be directed.

(3) An order for confinement under clause (b) or for search under clause (c) of sub-section (1) may be carried out by any officer of Government to whom the order may be directed, and such officer may use all means reasonably necessary to enforce the same.

35. Any person making an arrest in pursuance of an order under clause (a) of sub-section (1) of section 34 shall forthwith report the fact to the Local Government and, pending receipt of the orders of the Local Government, may by order in writing commit any person so arrested to such custody as the Local Government may by general or special order specify in this behalf : Arrest.

Provided that no person shall be detained in such custody for a period exceeding seven days unless the Local Government so directs, and in no case shall such detention exceed fifteen days.

36. An order for the search of any place issued under the provisions of clause (c) of sub-section (1) of section 34 shall be deemed to be Application of Part II, procedure.

a search warrant issued by the District Magistrate having jurisdiction in the place specified therein, and shall be sufficient authority for the seizure of anything found in such place which the person executing the order has reason to believe is being used, or is likely to be used, for any purpose prejudicial to the public safety, and the provisions of the Code, so far as they can be made applicable, shall apply to searches made under the authority of any such order and to the disposal of any property seized in any such search.

37. Where an order (other than an order for arrest or search) has been made under section 34, the provisions of sections 23 to 27 shall apply in the same way as if the order were an order made under section 22, save that, on receipt of the report of the investigating authority, the Local Government may, subject to the conditions prescribed by section 27, make any order which is authorised by section 34, and sections 23 to 27 and 29 to 32 shall be deemed to be included in this Part.

Penalty for
disobedience
to orders
under this
Part

38. If any person fails to comply with, or attempts to evade, any order made under section 34 or section 37 other than an order to furnish security, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

PART IV.

Persons
already

39. (1) On the expiration of the Defence

of India (Criminal Law Amendment) Act, 1915, ^{under executive control.} every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before ^{IV of 1915.} the expiration of that Act, and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 21 is in force, and the provisions of Part II shall apply to every such ^{III of 1818.} person accordingly; and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 33 is in force, and the provisions of Part III shall apply to every such person accordingly :

Provided that, within one month from the ^{IV of 1915.} expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may, subject to the conditions prescribed in the first proviso to sub-section (3) of section 27 as made applicable by section 37, make any order or restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the provisions of the said Regulation, and if such an order is so made it shall be deemed to be an order made under sub-section (3) of section 27 as made applicable by section 37, and the provisions of that Part regarding such an order shall apply accordingly.

- V of 1914. (2) On the expiration of the Ingress into India Ordinance, 1914, as continued in force by
- I of 1915. the Emergency Legislation Continuance Act, 1915, any person in respect of whom an order was in force immediately before such expiration under section 2 of that Ordinance read with
- III of 1914. clause (b) or clause (c) of sub-section (2) of section 3 of the Foreigners Ordinance, 1914, shall be deemed to be a person resident in an area in which a notification under section 21 is in force, and the provisions of Part II shall apply to every such person accordingly :
- V of 1914. Provided that, within one month from the expiration of the Ingress into India Ordinance, 1914, the Local Government may, subject to the conditions prescribed in the first proviso to sub-section (3) of section 27, make any order of restraint which is authorised by that Part in respect of any such person, and if such an order is so made it shall be deemed to be an order made under sub-section (3) of section 27, and the provisions of that Part regarding such an order shall apply accordingly.

PART V.

Effect of
cancellation
of notifica-
tions under
section 3, 21
or 33.

40. When a notification issued under section 3 or section 21 or section 33 is cancelled, such cancellation shall not affect any trial, investigation or order commenced or made under this Act, and such trial, investigation or order may be continued or enforced, and on the completion of any such investigation, any order

which might otherwise have been made may be made and enforced, as if such notification had not been cancelled.

41. (1) An order made under Part II or Part III, directing a person to remain or reside in any area in British India outside the area in which such Part is in force, shall be as valid, and enforceable in like manner, as if such Part were in force throughout British India.

Effect of orders made under Parts II and III outside notified area.

(2) An order made under clause (a) of subsection (1) of section 34 for the arrest of any person may be executed at any place in British India outside the area in which Part III is in force, and the same procedure shall be followed as if Part III was in force throughout British India :

Provided that, if the arrest is made outside the province of the Local Government which made the order, the report required by section 35 shall be made to that Local Government, and the maximum period of detention limited by the proviso to that section shall be extended to twenty-one days.

42. No order under this Act shall be called in question in any Court, and no suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Orders under this Act not to be called in question by the Courts.

43. All powers given by this Act shall be in addition to, and not in derogation of, any other powers conferred by or under any enactment, and all such powers may be exercised in the

Powers of Act to be cumulative.

same manner and by the same authority as if this Act had not been passed.

THE SCHEDULE.

(See section 2.)

XLV of
1860.

(1) Any offence under the following sections of the Indian Penal Code, namely :—Sections 121, 121-A, 122, 123, 124, 131 and 132.

(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any anarchical or revolutionary movement, namely :—

XLV of
1860.

(a) any offence under sections 124-A, 148, 153-A, 302, 304, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460, and 506 of the Indian Penal Code;

VI of 1908.

(b) any offence under the Explosive Substances Act, 1908;

(c) any offence under section 20 of the Indian Arms Act, 1878.

XI of
1878.

(3) Any attempt or conspiracy to commit or any abetment of any of the above offences.

APPENDIX A.

I.

QUEEN VICTORIA'S LETTER TO THE EARL OF DERBY.

(15TH AUGUST, 1858).

The Queen has asked Lord Malmesbury to explain in detail to Lord Derby her objection to the draft of Proclamation for India. The Queen would be glad if Lord Derby would write it himself in his excellent language, bearing in mind that it is a female Sovereign who speaks to more than 100,000,000 of Eastern people on assuming the direct Government over them after a bloody civil war, giving them pledges which her future reign is to redeem, and explaining the principles of her Government. Such a document should breathe feelings of generosity, benevolence, and religious feeling, pointing out the privileges which the Indians will receive in being placed on an equality with the subjects of the British Crown, and the prosperity following in the train of civilisation.

II.

THE QUEEN'S PROCLAMATION, 1858.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, and of the Colonies and Dependencies thereof in Europe, Asia, Africa, America, and Australasia, Queen, Defender of the Faith.

Whereas, for divers weighty reasons, we have resolved, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon ourselves the Government of the territories in India, heretofore administered in trust for us by the Honourable East India Company.

Now, therefore, we do by these presents notify and declare that, by the advice and consent aforesaid, we have taken upon ourselves the said Government; and we hereby call upon all our subjects within the said territories to be faithful, and to bear true allegiance to us, our heirs and successors, and to submit

themselves to the authority of those whom we may hereafter, from time to time, see fit to appoint to administer the government of our said territories, in our name and our behalf.

And we, reposing especial trust and confidence in the loyalty, ability, and judgment of our right trusty and beloved cousin Charles John, Viscount Canning, do hereby constitute and appoint him the said Viscount Canning, to be our first Viceroy and Governor-General in and over said territories, and to administer the Government thereof in our name, and generally to act in our name and on our behalf, subject to such orders and regulations as he shall, from time to time, receive through one of our Principal Secretaries of State.

And we do hereby confirm in their several offices, Civil and Military, all persons now employed in the service of the Honourable East India Company, subject to our future pleasure, and to such laws and regulations as may hereafter be enacted.

We hereby announce to the Native Princes of India, that all treaties and engagements made with them by or under the authority of the East India Company are by us accepted, and will be scrupulously maintained, and we look for the like observance on their part.

We desire no extension of our present territorial possessions; and while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others.

We shall respect the rights, dignity, and honour of native princes as our own; and we desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.

We hold ourselves to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil.

Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted, by reason of their religious faith or observances, but that all

shall alike enjoy the equal and impartial protection of the law ; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge.

We know, and respect, the feelings of attachment with which natives of India regard the lands inherited by them from their ancestors and we desire to protect them in all rights connected therewith, subject to the equitable demands of the state ; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights, usages, and customs of India.

We deeply lament the evils and misery which have been brought upon India by the acts of ambitious men, who have deceived their countrymen by false reports, and led them unto open rebellion. Our power has been shown by the suppression of that rebellion in the field ; we desire to show our mercy by pardoning the offences of those who have been misled, but who desire to return to the path of duty.

Already, in one province, with a desire to stop the further effusion of blood, and to hasten the pacification of our Indian dominions, our Viceroy and Governor-General has held out the expectation of pardon, on certain terms, to the great majority of those who, in the late unhappy disturbances, have been guilty of offences against our Government, and has declared the punishment which will be inflicted on those whose crimes place them beyond the reach of forgiveness. We approve and confirm the said act of our Viceroy and Governor-General, and do further announce and proclaim as follows :—

Our clemency will be extended to all offenders, save and except those who have been, or shall be, convicted of having directly taken part in the murder of British subjects. With regard to such the demands of justice forbid the exercise of mercy.

To those who have willingly given asylum to murderers, knowing them to be such, or who may have acted as leaders or

instigators of revolt, their lives alone can be guaranteed ; but in apportioning the penalty due to such persons, full consideration will be given to the circumstances under which they have been induced to throw off their allegiance ; and large indulgence will be shown to those whose crimes may appear to have originated in too credulous acceptance of the false reports circulated by designing men.

To all others in arms against the Government we hereby promise unconditional pardon, amnesty, and oblivion of all offences against ourselves, our crown and dignity, on their return to their homes and peaceful pursuits.

It is our royal pleasure that these terms of grace and amnesty should be extended to all those who comply with these conditions before the 1st day of January next.

When, by the blessing of Providence, internal tranquillity shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the Government for the benefit of our subjects resident therein. In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward. And may the God of all power grant to us, and to those in authority under us, strength to carry out these our wishes for the good of our people.

III.

KING-EMPEROR EDWARD VII'S PROCLAMATION.

2ND NOVEMBER, 1908.

It is now 50 years since Queen Victoria, my beloved mother, and my August Predecessor on the throne of these realms, for divers weighty reasons, with the advice and consent of Parliament, took upon herself the government of the territories theretofore administered by the East India Company. I deem this a fitting anniversary on which to greet the Princes and Peoples of India, in commemoration of the exalted task then solemnly undertaken. Half a century is but a brief span in your long annals, yet this half century that ends to-day will stand amid the floods of your historic ages, a far-shining landmark. The proclamation of the direct supremacy of the Crown sealed the unity of Indian Government and opened a new era.

The journey was arduous, and the advance may have sometimes seemed slow ; but the incorporation of many strangely diversified communities, and of some three hundred millions of the human race, under British guidance and control has proceeded steadfastly and without pause. We survey our labours of the past half century with clear gaze and good conscience.

Difficulties such as attend all human rule in every age and place, have risen up from day to day. They have been faced by the servants of the British Crown with toil and courage and patience, with deep counsel and a resolution that has never faltered nor shaken. If errors have occurred, the agents of my government have spared no pains and no self-sacrifice to correct them ; if abuses have been proved, vigorous hands have laboured to apply a remedy.

No secret of empire can avert the scourge of drought and plague, but experienced administrators have done all that skill and devotion are capable of doing to mitigate those dire calamities of Nature. For a longer period than was ever known in your land before, you have escaped the dire calamities of War within your borders. Internal peace has been unbroken.

In the great charter of 1858 Queen Victoria gave you noble assurance of her earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the government for the benefit of all resident therein. The schemes that have been diligently framed and executed for promoting your material convenience and advance—schemes unsurpassed in their magnitude and their boldness—bear witness before the world to the zeal with which that benignant promise has been fulfilled.

The rights and privileges of the Feudatory Princes and Ruling Chiefs have been respected, preserved, and guarded ; and the loyalty of their allegiance has been unswerving. No man among my subjects has been favoured, molested, or disquieted, by reason of his religious belief or worship. All men have enjoyed protection of the law. The law itself has been administered without disrespect to creed or caste or to usages and ideas rooted in your civilisation ; it has been simplified in form, and its machinery adjusted to the requirements of ancient communities slowly entering a new world.

The charge confided to my Government concerns the

destinies of countless multitudes of men now and for ages to come, and it is a paramount duty to repress with a stern arm guilty conspiracies that have no just cause and no serious aim. These conspiracies I know to be abhorrent to the loyal and faithful character of the vast hosts of my Indian subjects, and I will not suffer them to turn me aside from my task of building up the fabric of security and order.

Unwilling that this historic anniversary should pass without some signal mark of Royal clemency and grace, I have directed that, as was ordered on the memorable occasion of the Coronation Durbar in 1903, the sentences of persons whom our courts have duly punished for offences against the law, should be remitted, or in various degrees reduced; and it is my wish that such wrong-doers may remain mindful of this act of mercy, and may conduct themselves without offence henceforth.

Steps are being continuously taken towards obliterating distinctions of race as the test for access to posts of public authority and power. In this path I confidently expect and intend the progress henceforward to be steadfast and sure, as education spreads, experience ripens and the lessons of responsibility are well learned by the keen intelligence and apt capabilities of India.

From the first, the principle of representative institutions began to be gradually introduced, and the time has come when, in the judgment of my Viceroy and Governor-General and others of my councillors, that principle may be prudently extended. Important classes among you, representing ideas that have been fostered and encouraged by British rule, claim equality of citizenship, and a greater share in legislation and Government. The politic satisfaction of such a claim will strengthen, not impair, existing authority and power. Administration will be all the more efficient, if the officers who conduct it have greater opportunities of regular contact with those whom it affects, and with those who influence and reflect common opinion about it. I will not speak of the measures that are now being diligently framed for these objects. They will speedily be made known to you, and will, I am very confident, mark a notable stage in the beneficent progress of your affairs.

I recognise the valour and fidelity of my Indian troops, and at the new year I have ordered that opportunity should be

taken to show in substantial form this, my high appreciation of their martial instincts, their splendid discipline, and their faithful readiness of service.

The welfare of India was one of the objects dearest to the heart of Queen Victoria. By me, ever since my visit in 1875, the interests of India, its Princes and Peoples, have been watched with an affectionate solicitude that time can not weaken. My dear Son, the Prince of Wales, and the Princess of Wales, returned from their sojourn among you with warm attachment to your land, and true and earnest interest in its well-being and content. These sincere feelings of active sympathy and hope for India on the part of my Royal House and Line, only represent, and they do most truly represent, the deep and united will and purpose of the people of this Kingdom.

My divine protection and favour strengthen the wisdom and mutual good will that are needed for the achievement of a task as glorious as was ever committed to rulers and subjects in any state or empire of recorded time.

IV.

H. I. M. KING-EMPEROR GEORGE V'S LETTER TO THE PRINCES AND PEOPLES OF INDIA.

24TH MAY, 1910.

The lamented and unlooked for death of my dearly loved father calls me to ascend the Throne that comes to me as the heir of a great and ancient line. As King and Emperor, I greet the Princes, the Ruling Chiefs, and all the other dwellers in my Indian dominions. I offer you my heartfelt thanks for the touching and abundant manifestation that this event has called forth from all the diverse races, classes, and faiths in India, of loyalty to the sovereign crown, and personal attachment to its wearers.

Queen Victoria, of revered memory, addressed her Indian subjects and the heads of Feudatory States when she assumed the direct government in 1858, and her august son, my father, of honoured and beloved name, commemorated the same most notable event in his Address to you some fifty years later. These are the charters of the noble and benignant spirit of Imperial

rule, and by that spirit in all my time to come I will faithfully abide.

By the wish of his late Majesty, and following his own example, I visited India five years ago, accompanied by my Royal Consort. We became personally acquainted with great Kingdoms known to history, with monuments of a civilisation older than our own, with ancient customs and ways of life, with native Rulers, with the peoples, the cities, towns, villages, throughout those vast territories. Never can either the vivid impressions or the affectionate associations of that wonderful journey vanish or grow dim.

Finally I confide in your dutiful and active co-operation in the high and arduous tasks that lie before me ; and I count upon your ready response to the earnest sympathy with the well-being of India that must ever be the inspiration of my rule.

V.

ANNOUNCEMENT OF H. I. M. KING-EMPEROR GEORGE V. AT THE CORONATION DURBAR.

DECEMBER 12, 1911.

I.

It is with genuine feelings of thankfulness and satisfaction that I stand here to-day among you. This year has been to the Queen-Empress and myself one of many great ceremonies and of an unusual though happy burden of toil. But in spite of time and distance, the grateful recollections of our last visit to India have drawn us again to the land which we then learned to love, and we started with bright hopes on our long journey to revisit the country in which we had already met the kindness of a home.

In doing so I have fulfilled the wish expressed in my message of last July, to announce to you in person my Coronation, celebrated on the 22nd of June in Westminster Abbey, when by the Grace of God the Crown of my Forefathers was placed on my head with solemn form and ancient ceremony.

By my presence with the Queen-Empress I am also anxious to show our affection for the loyal Princes and faithful Peoples

of India, and how dear to our hearts is the welfare and happiness of the Indian Empire.

It was, moreover, my desire that those who could not be present at the solemnity of the Coronation, should have the opportunity of taking part in its commemoration at Delhi.

It is a sincere pleasure and gratification to myself and the Queen-Empress to behold this vast assemblage and in it my Governors and trusty officials, my great Princes, the representatives of the Peoples, and deputations from the Military Forces of my Indian Dominions.

I shall receive in person with heartfelt satisfaction the homage and allegiance which they loyally desire to render.

I am deeply impressed with the thought that a spirit of sympathy and affectionate goodwill unites Princes and Peoples with me on this historic occasion.

In token of these sentiments I have decided to commemorate the event of my Coronation by certain marks of my especial favour and consideration, and these I will later on cause to be announced by my Governor-General to this Assembly.

Finally I rejoice to have this opportunity of renewing in my own person those assurances which have been given you by my predecessors of the maintenance of your rights and privileges and of my earnest concern for your welfare, peace, and contentment.

May the Divine favour of Providence watch over my People and assist me in my utmost endeavour to promote their happiness and prosperity.

To all present, feudatories and subjects, I tender our loving greeting.

2.

We are pleased to announce to Our People that on the advice of Our Ministers tendered after consultation with Our Governor-General in Council we have decided upon the transfer of the seat of the Government of India from Calcutta to the ancient Capital of Delhi, and, simultaneously and as a consequence of that transfer, the creation at as early a date as possible of a Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Bihar, Chota Nagpur, and Orissa, and of a Chief Commissionership of Assam,

with such administrative changes and redistribution of boundaries as Our Governor-General-in-Council with the approval of our Secretary of State for India in Council may in due course determine. It is our earnest desire that these changes may conduce to the better administration of India and the greater prosperity and happiness of our beloved People.

VI.

ANNOUNCEMENT BY THE GOVERNOR-GENERAL OF INDIA ON BEHALF OF HIS MAJESTY THE KING-EMPEROR.

DECEMBER 12, 1911.

By the command of His Most Excellent Majesty George the Fifth, by the grace of God, King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Defender of the Faith, Emperor of India, I, His Governor-General, do hereby declare and notify the grants, concessions, reliefs, and benefactions which His Imperial Majesty has been graciously pleased to bestow upon this glorious and memorable occasion.

Humbly and dutifully submissive to His Most Gracious Majesty's will and pleasure, the Government of India have resolved, with the approval of His Imperial Majesty's Secretary of State, to acknowledge the predominant claims of educational advancement on the resources of Indian Empire, and have decided in recognition of a very commendable demand to set themselves to making education in India as accessible and wide as possible. With this purpose they propose to devote at once 50 lakhs to the promotion of truly popular education, and it is the firm intention of Government to add to the grant now announced further grants in future years on a generous scale.

Graciously recognising the signal and faithful services of His forces by land and sea, the King-Emperor has charged me to announce the award of half a month's pay of rank to all non-commissioned officers and men and reservists both of His British Army in India and His Indian Army, to the equivalent ranks of the Royal Indian Marine, and to all permanent employees of departmental or non-combatant establishments

paid from the military estimates whose pay may not exceed the sum of Rs. 50/- monthly.

Furthermore His Imperial Majesty has been graciously pleased to ordain that from henceforth the loyal Native officers, men, and reservists of His Indian Army shall be eligible for the grant of the Victoria Cross for valour ; that membership of the Order of British India shall be increased during the decade following this His Imperial Majesty's Coronation Durbar by 52 appointments in the First Class, and by 100 appointments in the Second Class, and that in mark of these historic ceremonies 15 new appointments in the First Class and 19 New appointments in the Second Class shall forthwith be made ; that from henceforth Indian officers of the Frontier Militia Corps and the Military Police shall be deemed eligible for admission to the aforesaid Order ; that special grants of land or assignments or remissions of land revenue, as the case may be, shall now be conferred on certain Native officers of His Imperial Majesty's Indian Army who may be distinguished for long and honourable service ; and that the special allowance now assigned for three years only to the widows of the deceased members of the Indian Order of Merit shall, with effect from the date of his Durbar, hereafter be continued to all such widows until death or re-marriage.

Graciously appreciating the devoted and successful labours of His Civil Services His Imperial Majesty has commanded me to declare the grant of a half a month's pay to all permanent servants in the civil employ of Government whose pay may not exceed the sum of Rs. 50/- monthly.

Further, it is His Imperial Majesty's gracious behest that all persons to whom may have been or hereafter may be granted the titles of Dewan Bahadur, Sirdar Bahadur, Khan Bahadur, Rai Bahadur, Rao Bahadur, Khan Sahib, or Rao Sahib, shall receive distinctive badges as a symbol of respect and honour ; and that on all holders present or to come of the venerable titles of Mahamahopadyaya and Shamsululama shall be conferred some annual pension for the good report of the ancient learning of India.

Moreover, in commemoration of this Durbar, and as a reward for conspicuous public service, certain grants of land, free of revenue, tenable for the life of the grantee, or in the

descretion of the local administration for one further life, shall be bestowed or restored in the North-Western Frontier Province and in Baluchistan.

In His gracious solicitude for the welfare of His loyal Indian Princes His Imperial Majesty has commanded me to proclaim that from henceforth no Nazarana payment shall be made upon succession to their States. And sundry debts owing to the Government by the non-jurisdictional estates in Kathiawar and Gujrat, and also by the Bhumia Chiefs of Mewar, will be cancelled and remitted in whole or in part under the Orders of the Government of India.

In token of his appreciation of the Imperial Service Troops certain supernumerary appointments in the Order of British India will be made.

In the exercise of His Royal and Imperial clemency and compassion His Most Excellent Majesty has been graciously pleased to ordain that certain prisoners now suffering the penalty of the law for crimes and misdemeanours shall be released from imprisonment, and that all those civil debtors now in prison whose debts may be small, and due not to fraud, but to real poverty, shall be discharged and that their debts shall be paid.

The persons by whom and the terms and conditions on which these grants, concessions, reliefs, and benefactions shall be enjoyed will be hereafter declared.

GOD SAVE THE KING.

VII.

KING GEORGE V'S PROCLAMATION.

DECEMBER 23, 1919.

George the Fifth, by the grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India. To my Viceroy and Governor-General, to the Princes of Indian States and to all my subjects in India of whatsoever race or creed, greeting.

* A proclamation by His Majesty the King-Emperor announcing His Majesty's Royal assent to the Reform Bill and his intention to send out the Prince of Wales to India by the next winter to inaugurate the new Chamber of the Ruling Chiefs and Princes and the new constitution in British India, dated, *Wednesday, the 23rd December, 1919.*

ANNOUNCEMENT OF THE 20TH AUGUST, 1917.

On August 20, 1917, the Secretary of State for India made the following announcement in the House of Commons :—

“The policy of His Majesty’s Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty’s Government have accordingly decided, with His Majesty’s approval, that I should accept the Viceroy’s invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others.

“I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

“Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament.”

(To face page 244.)



I. Another epoch has been reached to-day in the Councils of India. I have given my Royal assent to an Act which will take its place among the great historic measures passed by the Parliament of this Realm for the better government of India and the greater contentment of her people. The Acts of seventeen hundred and seventy-three and seventeen hundred and eighty-four were designed to establish a regular system of administration and justice under the Honourable East India Company. The Act of eighteen hundred and thirty-three opened the door for Indians to public office and employment. The Act of eighteen hundred and fifty-eight transferred the administration from the Company to the Crown and laid the foundations of public life which exist in India to-day. The Act of eighteen hundred and sixty-one sowed the seed of representative institutions and the seed was quickened into life by the Act of nineteen hundred and nine. The Act which has now become law entrusts elected representatives of the people with a definite share in Government and points the way to full representative Government hereafter. If, as I confidently hope the policy which this Act inaugurates should achieve its purpose the results will be momentous in the history of human progress, and it is timely and fitting that I should invite you to-day to consider the past and to join me in my hopes of the future.

A RECAPITULATION.

II. Ever since the welfare of India was confided to us it has been held as a sacred trust by our Royal House and Line. In eighteen hundred and fifty-eight Queen Victoria of revered memory solemnly declared herself bound to her Indian subjects by the same obligations of duty as to all her other subjects ; and she assured them religious freedom and the equal and impartial protection of law. In his message to the Indian people in nineteen hundred and three my dear father King Edward the Seventh announced his determination to maintain unimpaired the same principles of humane and equitable administration. Again in his proclamation of nineteen hundred and eight he renewed the assurances which had been given fifty years before and surveyed the progress which they had inspired. On my accession to the throne in nineteen hundred and ten I sent a message to the Princes and Peoples of India acknowledging

their loyalty and homage and promising that the prosperity and happiness of India should always be to me of the highest interest and concern. In the following year I visited India with the Queen-Empress and testified my sympathy for her people and my desire for their well-being.

III. While these are sentiments of affection and devotion by which I and my predecessors have been animated, the Parliament and the people of this Realm and my officers in India have been equally zealous for the moral and material advancement of India. We have endeavoured to give to her people the many blessings which Providence has bestowed upon ourselves. But there is one gift which yet remains and without which the progress of a country cannot be consummated: the right of her people to direct her affairs and safeguard her interests. The defence of India against foreign aggression is a duty of common Imperial interest and pride. The control of her domestic concerns is a burden which India may legitimately aspire to taking upon her own shoulders. The burden is too heavy to be borne in full until time and experience have brought the necessary strength; but opportunity will now be given for experience to grow and for responsibility to increase with the capacity for its fulfilment.

INDIA'S POLITICAL AMBITION.

IV. I have watched with understanding and sympathy the growing desire of my Indian people for representative institutions. Starting from small beginnings this ambition has steadily strengthened its hold upon the intelligence of the country. It has pursued its course along constitutional channels with sincerity and courage. It has survived the discredit which at times and in places lawless men sought to cast upon it by acts of violence committed under the guise of patriotism. It has been stirred to more vigorous life by the ideals for which the British Commonwealth fought in the Great War and it claims support in the part which India has taken in our common struggles, anxieties and victories. In truth the desire after political responsibilities has its source at the roots of the British connection with India. It has sprung inevitably from the deeper and wider studies of human thought and history, which that connection has opened to the Indian people. Without it the

work of the British in India would have been incomplete. It was, therefore, with a wise judgment that the beginnings of representative institutions were laid many years ago. This scope has been extended stage by stage until there now lies before us a definite step on the road to responsible Government.

THE REFORMS AND CO-OPERATION.

V. With the same sympathy and with redoubled interest I shall watch the progress along this road. The path will not be easy and in marching towards the goal there will be need of perseverance and of mutual forbearance between all sections and races of my people in India. I am confident that those high qualities will be forthcoming. I rely on the new popular assemblies to interpret wisely the wishes of those whom they represent and not to forget the interests of the masses who cannot yet be admitted to the franchise. I rely on the leaders of the people, the Ministers of the future, to face responsibility and endure to sacrifice much for the common interest of the State, remembering that true patriotism transcends party and communal boundaries ; and while retaining the confidence of the legislatures, to co-operate with my officers for the common good in sinking unessential differences and in maintaining the essential standards of a just and generous Government. Equally do I rely on my officers to respect their new colleagues and to work with them in harmony and kindness ; to assist the people and their representatives in an orderly advance towards free institutions ; and to find in these new tasks a fresh opportunity to fulfil as in the past their highest purpose of faithful service to my people.

CLEMENCY TO POLITICAL OFFENDERS.

VI. It is my earnest desire at this time that so far as possible any trace of bitterness between my people and those who are responsible for my Government should be obliterated. Let those who in their eagerness for political progress have broken the law in the past respect it in future. Let it become possible for those who are charged with the maintenance of peaceful and orderly Government to forget extravagances they have had to curb. A new era is opening. Let it begin with a common determination among my people and my officers to work together for a common purpose. I therefore direct my

Viceroy to exercise in my name and on my behalf my Royal clemency to political offenders in the fullest measure which in his judgment is compatible with public safety. I desire him to extend it on this condition to persons who for offences against the State or under any special or emergency legislation are suffering from imprisonment or restrictions upon their liberty. I trust that this leniency will be justified by the future conduct of those whom it benefits and that all my subjects will so demean themselves as to render it unnecessary to enforce the laws for such offences hereafter.

CHAMBER OF PRINCES.

VII. Simultaneously with the new constitution in British India I have gladly assented to the establishment of a Chamber of Princes. I trust that its counsels may be fruitful of lasting good to the Princes and States themselves may advance the interests which are common to their territories and British India and may be to the advantage of the Empire as a whole. I take the occasion again to assure the Princes of India of my determination ever to maintain unimpaired their privileges, rights and dignities.

THE PRINCE'S VISIT.

VIII. It is my intention to send my dear son, the Prince of Wales, to India by next winter to inaugurate on my behalf the new Chamber of Princes and the new constitution in British India. May he find mutual goodwill and confidence prevailing among those on whom will rest the future service of the country, so that success may crown their labours and progress and enlightenment attend their administration. And with all my people I pray to Almighty God that by His wisdom and under His guidance India may be led to greater prosperity and contentment and may grow to the fulness of political freedom. December, the twenty-third, nineteen hundred and nineteen."

APPENDIX B.

CHARTERS OF RIGHTS AND LIBERTIES OF THE ENGLISH PEOPLE.

I. MAGNA CHARTA.

No scutage or aid shall be imposed in Our Kingdom unless by common Council thereof, except to ransom Our person, make Our eldest son a knight, and once to marry Our eldest daughter, and for this a reasonable aid only shall be paid. So shall it be with regard to aids from the City of London.

And for obtaining the common Council of the Kingdom concerning the Assessment of aids other than in the three cases aforesaid or of scutage, We will cause to be summoned, severally by our letters, The Archbishops, Bishops, Abbots, Earls, and Great Barons ; and in addition We will also cause to be summoned, by Our Sheriffs and Bailiffs, all those who hold of Us in chief, to meet at a certain day, to wit, at the end of forty days, at least, and at a certain place ; and in all letters of such summons We will explain the cause thereof, and the summons being thus made the business shall proceed on the day appointed, according to the advice of those who shall be present, notwithstanding that the whole number of persons summoned shall not have come.

No freeman shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him except by lawful judgment of his peers or the law of the land.

To no one will We sell, to none will We deny or defer, right of justice.

II. PETITION OF RIGHT, A. D. 1628.

3 CAR. I. c. 1.

The Petition exhibited to His Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

To the King's Most Excellent Majesty.

Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I; commonly called *Statutum de Tallagio non Concedendo*, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the goodwill and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound and make appearance and give utterance before your Privy Council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your Majesty, or your Privy Council, against the laws and free customs of the realm.

III. And whereas also by the statute called "The Great Charter of the liberties of England," it is declared and enacted,

that no freeman may be taken or imprisoned or be disseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgement of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed ; and when for their deliverance they were brought before your justices by your Majesty's writs of *Habeas Corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers countries of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people.

VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land ; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament : and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm ; nevertheless of late time divers commissions under your Majesty's great seal have issued

forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanour whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

VIII. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

IX. And also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of Justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as

aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm ; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example ; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your Majesty, and the prosperity of this kingdom.

Qua quidem petitione lecta et plenius intellecta per dictum dominum regem taliter est responsum in pleno parlamento, viz., Soit droit fait come est desired.—(Statutes of the Realm, V. 24, 25.)

III. THE HABEAS CORPUS ACT, A. D. 1679.

31 CAR. II. c. 2.

An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonments beyond the Seas.

Whereas great delays have been used by sheriffs, gaolers, and other officers, to whose custody any of the king's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of *Habeas Corpus* to them directed, by standing out an *Alias* and *Pluries Habeas Corpus*, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the king's subjects have been and hereafter may be long detained in prison, in such cases where by law they areailable, to their great charges and vexation :

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters ; be it enacted by the King's most

excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority thereof, that whensoever any person or persons shall bring any *Habeas Corpus* directed unto any sheriff or sheriffs, gaoler, minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer or left at the gaol or prison with any of the under-officers, under-keepers or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ ; and bring or cause to be brought the body of the party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the great seal of England for the time being, or the judges or barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof ; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing ; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, gaoler or other officer may pretend ignorance of the import of any such writ ; be it enacted by the authority aforesaid, that all such writs shall be marked in this manner, *per statutum tricesimo primo*

Caroli secundi regis, and shall be signed by the person that awards the same ; and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process) or any one on his or their behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif ; and the said Lord Chancellor, Lord Keeper, justices or barons or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized, and required, upon request made in writing by such person or persons or any on his, her or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *Habeas Corpus* under the seal of such court whereof he shall then be one of the judges, to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable immediate before the said Lord Chancellor or Lord Keeper, or such justice, baron or any other justice or baron of the degree of the coif of any of the said courts ; and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor or Lord Keeper, or such justices, barons or one of them, before whom the said writ is made returnable, and in case of his absence before any of them, with the return of such writ, and the true causes of the commitment and detainer ; and thereupon within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their

recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the court of king's bench the term following, or at the next assizes, sessions, or general gaol-delivery of and for such county, city, or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said court where such appearance is to be made ; unless it shall appear unto the said Lord Chancellor or Lord Keeper, or justice or justices, or baron or barons that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by the law the prisoner is not bailable.

IV. Provided always, and be it enacted, that if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, to pray a *Habeas Corpus* for his enlargement, such person so wilfully neglecting shall not have any *Habeas Corpus* to be granted in vacation-time, in pursuance of this act.

V. And be it further enacted by the authority aforesaid, that if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver, to the person so demanding, a true copy of the warrant or warrants of commitment and detainer, of such prisoner, which he and they are hereby required to deliver accordingly ; all and every the head gaolers and keepers of such prison, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of one hundred pounds ;

and for the second offence the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office ; the said penalties to be recovered by the prisoner or party grieved, his executors or administrators against such offender, his executors or administrators, by any action of debt, suit, bill, plaint, or information, in any of the king's courts at Westminster, wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution by *non vult ulterius prosequere*, or otherwise, shall be admitted or allowed, or any more than one imparlance ; and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence ; any after recovery or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

VI. And for the prevention of unjust vexation by reiterated commitments for the same offence ; be it enacted by the authority aforesaid that no person or persons which shall be delivered or set at large upon any *Habeas Corpus*, shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause ; and if any other person or persons shall knowingly contrary to this act recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or he knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of five hundred pounds ; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

VII. Provided always, and be it further enacted, that if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the sessions of Oyer and Terminer or general gaol-delivery, to be brought to his trial, shall not be indicated some time in the next term, sessions of

Oyer and Terminer or general gaol-delivery, after such commitment ; it shall and may be lawful to and for the judges of the court of king's bench and justices of Oyer and Terminer or general gaol-delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions or gaol-delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices upon oath made, that the witnesses for the king could not be produced the same term, sessions or general gaol-delivery ; and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term or first day of the sessions of Oyer and Terminer and general gaol-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of Oyer and Terminer or general gaol-delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

VIII. Provided always, that nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law, for such other suit.

IX. Provided always, and be it enacted by the authority aforesaid, that if any person or persons, subjects of this realm, shall be committed to any prison or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers ; unless it be by *Habeas Corpus* or some other legal writ ; or where the prisoner is delivered to the constable or other inferior officer to carry such prisoner to some common gaol ; or where any person is sent by order of any judge of assize or justice of the peace to any common workhouse or house of correction ; or where the prisoner is removed from one prison or place to another within the same country, in order to his or her trial or discharge in due course of law ; or in case of sudden fire or infection, or other necessity ; and if any person or persons shall after such commitment aforesaid make out and sign, or countersign any warrant or warrants for

such removal aforesaid, contrary to this act ; as well he that makes or signs, or countersigns such warrant or warrants as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

X. Provided also, and be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their *Habeas Corpus* as well out of the high court of chancery or court of exchequer, as out of the courts of king's bench or common pleas, or either of them ; and if the said Lord Chancellor or Lord Keeper, or any judge or judges, baron or barons for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation-time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of *Habeas Corpus* by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved the sum of five hundred pounds, to be recovered in manner aforesaid.

XI. And be it declared and enacted by the authority aforesaid, that an *Habeas Corpus* according to the true intent and meaning of this act, may be directed and run into any country palatine, the cinque ports, or other privileged places within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and the islands of Jersey of Guernsey ; any law or usage to the contrary notwithstanding.

XII. And for preventing illegal imprisonments in prisons beyond the seas ; be it further enacted by the authority aforesaid, that no subject of this realm now is, or hereafter shall be an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands or places beyond the seas, which are or at any time hereafter shall be within or without the dominions of his Majesty, his heirs or successors ; and that every such imprisonment is hereby enacted and adjudged to be illegal ; and that if any of the said subjects now is or here-

after shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment maintain by virtue of this act an action or actions of false imprisonment, in any of his Majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal or countersign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding or assisting in the same, or any of them ; and the plaintiff in every such action shall have judgment to recover his treble costs, besides damages, which damages so to be given, shall not be less than five hundred pounds ; in which action no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection or privilege whatsoever, nor any more than one imparlance shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought in justice necessary, for special cause to be expressed in the said rule ; and the person or persons who shall knowingly frame, contrive, write, seal or countersign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison or transport any persons or persons contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England, dominion of Wales, or town of Berwick upon Tweed, or any of the islands, territories or dominions thereunto belonging ; and shall incur and sustain the pains, penalties, and forfeitures limited, ordained and provided in and by the statute of Provision and Praemunire made in the sixteenth year of King Richard the Second ; and be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses, or disabilities, or any of them.

XIII. Provided always, that nothing in this act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

XIV. Provided always, and be it enacted, that if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas ; this act, or anything therein contained to the contrary notwithstanding.

XV. Provided also, and be it enacted, that nothing herein contained shall be deemed, construed or taken, to extend to the imprisonment of any person before the first day of June one thousand six hundred seventy and nine, or to anything advised, procured, or otherwise done, relating to such imprisonment ; anything herein contained to the contrary notwithstanding.

XVI. Provided also, that if any person or persons at any time resiant in this realm, shall have committed any capital offence in Scotland or Ireland, or any of the islands, or foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this act ; anything herein contained to the contrary notwithstanding.

XVII. Provided also, and be it enacted, that no person or persons shall be sued, impleaded, molested or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison ; and if shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

XVIII. And to the intent no person may avoid his trial at the assizes or general gaol-delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there ; be it enacted, that after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common goal upon any Habeas Corpus granted in pursuance of this act, but upon any

such Habeas Corpus shall brought before the judge of assize in court, who is thereupon to do what to justice shall appertain.

XIX. Provided nevertheless, that after the assizes are ended, any person or persons detained, may have his or her *Habeas Corpus* according to the direction and intention of this act.

XX. And be it also enacted by the authority aforesaid, that if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action, and the said matter shall be then as available to him or them, to all intents and purpose, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar or discharge of such information, suit or action.

XXI. And because many times persons charged with petty treason or felony, or as accessories thereunto, are committed upon suspicion only, whereupon they are bailable, or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justice of peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county ; be it therefore enacted, that where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

BILL OF RIGHTS, A. D. 1689.

I WILL & MAR. SESS. 2. C. 2.

Whereas the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely represent-

ing all the estates of the people of this realm, did upon the thirteenth day of February, in the year of our Lord one thousand six hundred eightyeight, present unto their Majesties, then called and known by the names and style of William and Mary, Prince and Princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said Lords and Commons, in the words following ; *viz* :—

Whereas the late King James II, by the assistance of diverse evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom :—

- (1) By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament.
- (2) By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the same assumed power.
- (3) By issuing and causing to be executed a commission under the Great Seal for erecting a court, called the Court of Commissioners for Ecclesiastical Causes.
- (4) By levying money for and to the use of the Crown, by pretence of prerogative, for other time, and in other manner than the same was granted by Parliament.
- (5) By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law.
- (6) By causing several good subjects, being Protestants, to be disarmed, at the same time when Papists were both armed and employed contrary to law.
- (7) By violating the freedom of election of members to serve in Parliament.
- (8) By prosecutions in the Court of King's Bench, for matters and causes cognizable only in Parliament ; and by diverse other arbitrary and illegal courses.
- (9) And whereas of late years, partial, corrupt, and unqualified persons have been returned and served on juries in trials, and particularly diverse jurors

in trials for high treason, which were not free-holders.

(10) And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

(11) And excessive fines have been imposed ; and illegal and cruel punishments inflicted.

(12) And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late King James II, having abdicated the government, and the throne being thereby vacant, his Highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal, and diverse principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal, being Protestants, and other letters to the several counties, cities, universities, boroughs, and cinque ports, for the choosing of such persons as represent them, as were of right to be sent to Parliament, to meet and sit at Westminster upon the two-and-twentieth day of January, in this year one thousand six hundred eighty and eight, in order to such an establishment, as that their religion, laws and liberties might not again be in danger of being subverted ; upon which letters, elections have been accordingly made.

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in full and free representation of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare :—

(1) That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

- (2) That the pretended power of dispensing with laws, or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal.
- (3) That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious.
- (4) That levying money for or to the use of the Crown, by pretence of prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal.
- (5) That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.
- (6) That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.
- (7) That the subjects which are Protestants may have arms for their defence suitable to their conditions, and as allowed by law.
- (8) That election of members of parliament ought to be free.
- (9) That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.
- (10) That excessive bail ought not to be required, nor excessive fines imposed ; nor cruel and unusual punishments inflicted.
- (11) That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.
- (12) That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.
- (13) And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliament ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties ; and that no declarations, judgments, doing or proceedings, to

the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties :

II. The said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, that William and Mary, Prince and Princess of Orange, be, and be declared, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the Crown and royal dignity of the said kingdoms and dominions to them the said Prince and Princess during their lives, and the life of the survivor of them ; and that the sole and full exercise of the regal power be only in, and executed by, the said Prince of Orange, in the names of the said Prince and Princess, during their joint lives ; and after their deceases, the said Crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said Princess ; and for default of such issue to the Princess Anne of Denmark, and the heirs of her body ; and for default of such issue to the heirs of the body of the said Prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them ; and that the said oaths of allegiance and supremacy be abrogated.

I, A. B., do sincerely promise and swear, That I will be faithful and bear true allegiance to their Majesties King William and Queen Mary : So help me God.

I, A. B., do swear, That I do from my heart, abhor, detest, and abjure as impious and heretical, that damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed

or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority ecclesiastical or spiritual, within this realm: So help me God.

IV. Upon which their said Majesties did accept the Crown and royal dignity of the kingdom of England, France and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration.

V. And thereupon their Majesties were pleased, that the said Lords Spiritual and Temporal, and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws, and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said Lords Spiritual and Temporal, and Commons, did agree and proceed to act accordingly.

VI. Now in pursuance of the premises, the said Lords Spiritual and Temporal, and Commons, in parliament assembled, for the ratifying, confirming, and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration, and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

VII. And the said Lords Spiritual and Temporal, and Commons, seriously considering how it hath pleased Almighty God, in his marvellous providence, and merciful goodness to this nation, to provide and preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto Him from the bottom of

their hearts their humblest thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts, think, and do hereby recognize, acknowledge, and declare, that King James II having abdicated the government, and their Majesties having accepted the Crown and royal dignity aforesaid, their said Majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege Lord and Lady, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal State, Crown, and dignity of the same realms, with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining, are most fully, rightfully, and entirely invested and incorporated, united, and annexed.

VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the Crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this nation doth, under God, wholly consist and depend, the said Lords Spiritual and Temporal, and Commons, do beseech their Majesties that it may be enacted, established, and declared that the Crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties, and the survivor of them, during their lives, and the life of the survivor of them. And that the entire, perfect, and full exercise of the regal power and government be only in, and executed by, his Majesty, in the names of both their Majesties during their joint lives ; and after their deceases the said Crown and premises shall be and remain to the heirs of the body of her Majesty : and for default of such issue, to her Royal Highness the Princess Anne of Denmark, and the heirs of her body ; and for default of such issue, to the heirs of the body of his said Majesty ; and thereunto the said Lords Spiritual and Temporal, and Commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities, for ever : and to faithfully promise, that they will stand to, maintain, and defend their said Majesties and also the limitation and succession of the Crown herein specified and contained, to the utmost of their powers, with

their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

IX. And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this Protestant kingdom, to be governed by a Popish prince, or by any king or queen marrying a Papist, the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, That all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess or enjoy the Crown and government of this realm, and Ireland, and the dominions thereunto belonging or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same ; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance ; and the said Crown and Government shall from time to time descend to, and be enjoyed by, such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons so reconciled, holding communion, or professing, or marrying as aforesaid, were naturally dead.

X. And that every king and queen of this realm, who at any time hereafter shall come to and succeed in the Imperial Crown of this kingdom, shall, on the first day of the meeting of the first parliament, next after his or her coming to the Crown, sitting in his or her throne in the House of Peers, in the presence of the Lords and Commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen), make, subscribe, and audibly repeat the declaration mentioned in the statute made in the thirteenth year of the reign of King Charles II, intituled 'An Act for the more effectual preserving the King's person and government, by disabling Papists from sitting in either House of Parliament.' But if it shall happen, that such king or queen, upon his or her succession to the Crown of this realm, shall be under the age of twelve years, then every such king or queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, or

the first day of meeting of the first parliament as aforesaid, which shall first happen after such king or queen shall have attained the said age of twelve years.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and by the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in parliament assembled, and by the authority of the same, declared, enacted, or established accordingly.

XII. And be it further declared and enacted by the authority aforesaid That from and after this present session of parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

XIII. Provided that no charter, or grant, or pardon granted before the three-and-twentieth day of October, in the year of our Lord One thousand six hundred eighty-nine, shall be any ways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other, than as if this act had never been made.—

THE ACT OF SETTLEMENT, A. D. 1700.

12 & 13 WILL. III.

An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject.

Whereas in the first year of the reign of your Majesty, and of our late most Gracious Sovereign Lady Queen Mary (of blessed memory) an Act of Parliament was made, intituled, 'An Act for settling the Succession of the Crown' wherein it was (amongst other things) enacted, established and declared, That the Crown and Regal Government of the kingdoms of England, France and Ireland, and the dominions thereunto belonging, should be and continue to your Majesty and the

said Late Queen, during the joint-lives of your Majesty and the said Queen, and to their survivor: And that after the decease of your Majesty and of the said Queen the said Crown and Regal Government should be and remain to the heirs of the body of the said late Queen: And for default of such issue, to her Royal Highness the Princess Anne of Denmark, and the heirs of her body: And for default of such issue, to the heirs of the body of your Majesty. And it was thereby further enacted, That all and every person and persons that then were, or afterwards should be reconciled to, or should hold communion with the See or Church of Rome, or should profess the Popish religion, or marry a Papist, should be excluded, and are by that act made for ever incapable to inherit, possess, or enjoy the Crown and Government of this realm and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same: And in all and every such case and cases the people of these realms shall be and are thereby absolved of their allegiance: And that the said Crown and Government shall from time to time descend to and be enjoyed by such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons, so reconciled, holding communion, professing, or marrying as aforesaid, were naturally dead. After the making of which statute, and the settlement therein contained, your Majesty's good subjects, who were restored to the full and free possession and enjoyment of their religion, rights, and liberties, by the providence of God giving success to your Majesty's just undertakings and unwearied endeavours for that purpose, had no greater temporal felicity to hope or wish for, than to see a royal progeny descending from your Majesty, to whom (under God) they owe their tranquillity, and whose ancestors have for many years been principal assertors of the reformed religion and the liberties of Europe, and from our said most gracious Sovereign Lady, whose memory will always be precious to the subjects of these realms: And it having since pleased Almighty God to take away our said Sovereign Lady, and also the most hopeful Prince William Duke of Gloucester (the only surviving issue of her Royal Highness the Princess Anne of Denmark) to the unspeakable

grief and sorrow of your Majesty and your said good subjects, who under such losses being sensibly put in mind, that it standeth wholly in the pleasure of Almighty God to prolong the lives of your Majesty and of her Royal Highness, and to grant to your Majesty, or to her Royal Highness, such issue as may be inheritable to the Crown and regal Government aforesaid, by the respective limitations in the said recited Act contained, do constantly implore the Divine Mercy for those blessings: and your Majesty's said subjects having daily experience of your royal care and concern for the present and future welfare of these kingdoms, and particularly recommending from your Throne a further provision to be made for the succession of the Crown in the Protestant line, for the happiness of the nation, and the security of our religion; and it being absolutely necessary for the safety, peace and quiet of this realm, to obviate all doubts and contentions in the same, by reason of any pretended title to the Crown, and to maintain a certainty in the succession thereof, to which your subjects may safely have recourse for their protection, in case the limitations in the said recited Act should determine: Therefore for a further provision of the succession of the Crown in the Protestant line, we your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, do beseech your Majesty that it may be enacted and declared, and be it enacted and declared by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the most Excellent Princess Sophia, Electress and Duchess Dowager of Hanover, daughter of the most Excellent Princess Elizabeth, late Queen of Bohemia, daughter of our late Sovereign Lord King James I, of happy memory, be and is hereby declared to be the next in succession, in the Protestant line, to the Imperial Crown and dignity of the said realms of England, France and Ireland, with the dominions and territories thereunto belonging, after his Majesty, and the Princess Anne of Denmark, and in default of issue of the said Princess Anne, and of his Majesty respectively: And that from and after the deceases of his said Majesty, our now Sovereign Lord, and of her Royal High-

ness the Princess Anne of Denmark, and for default of issue of the said Princess Anne, and of his Majesty respectively, the Crown and regal Government of the said kingdoms of England, France and Ireland, and of the dominions thereunto belonging, with the royal state and dignity of the said realms, and all honours, stiles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining, shall be, remain, and continue to the said most Excellent Princess Sophia, and the heirs of her body, being Protestants: And thereunto the said Lords Spiritual and Temporal, and Commons, shall and will, in the name of all the people of this realm, most humbly and faithfully submit themselves, their heirs and posterities, and do faithfully promise that after the deceases of his Majesty, and her Royal Highness, and the failure of the heirs of their respective bodies, to stand to, maintain, and defend the said Princess Sophia, and the heirs of her body, being Protestants, according to the limitation and succession of the Crown in this act specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

II. Provided always, and it is hereby enacted, That all and every person or persons, who shall or may take or inherit the said Crown, by virtue of the limitation of this present Act, and is, are or shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be subject to such incapacities, as in such case or cases are by the said recited Act provided, enacted, and established; and that every King and Queen of this realm, who shall come to and succeed in the Imperial Crown of this kingdom, by virtue of this Act, shall have the Coronation Oath administered to him, her or them, at their respective Coronations, according to the Act of Parliament made in the first year of the reign of his Majesty, and the said late Queen Mary, intituled, 'An Act for establishing the Coronation Oath,' and shall make, subscribe, and repeat the Declaration in the Act first above recited, mentioned or referred to, in the manner and form thereby prescribed.

III. And whereas it is requisite and necessary that some further provision be made for securing our religion, laws and

liberties, from and after the death of his Majesty and the Princess Anne of Denmark, and in default of issue of the body of the said Princess, and of his Majesty respectively : Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same.

That whosoever shall hereafter come to the possession of this Crown, shall join in communion with the Church of England, as by law established.

That in case the Crown and imperial dignity of this realm, shall hereafter come to any person, not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England, without the consent of Parliament.

That no person who shall hereafter come to the possession of this Crown, shall go out of the dominions of England, Scotland, or Ireland, without consent of Parliament.

That from and after the time that the further limitation by this Act shall take effect, all matters and things relating to the well governing of this kingdom, which are properly cognizable in the Privy Council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same.

That after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalised or made a denizen, except such as are born of English parents), shall be capable to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown, to himself or to any other or others in trust for him.

That no person who has an office or place of profit under the King, or received a pension from the Crown, shall be capable of serving as a Member of the House of Commons.

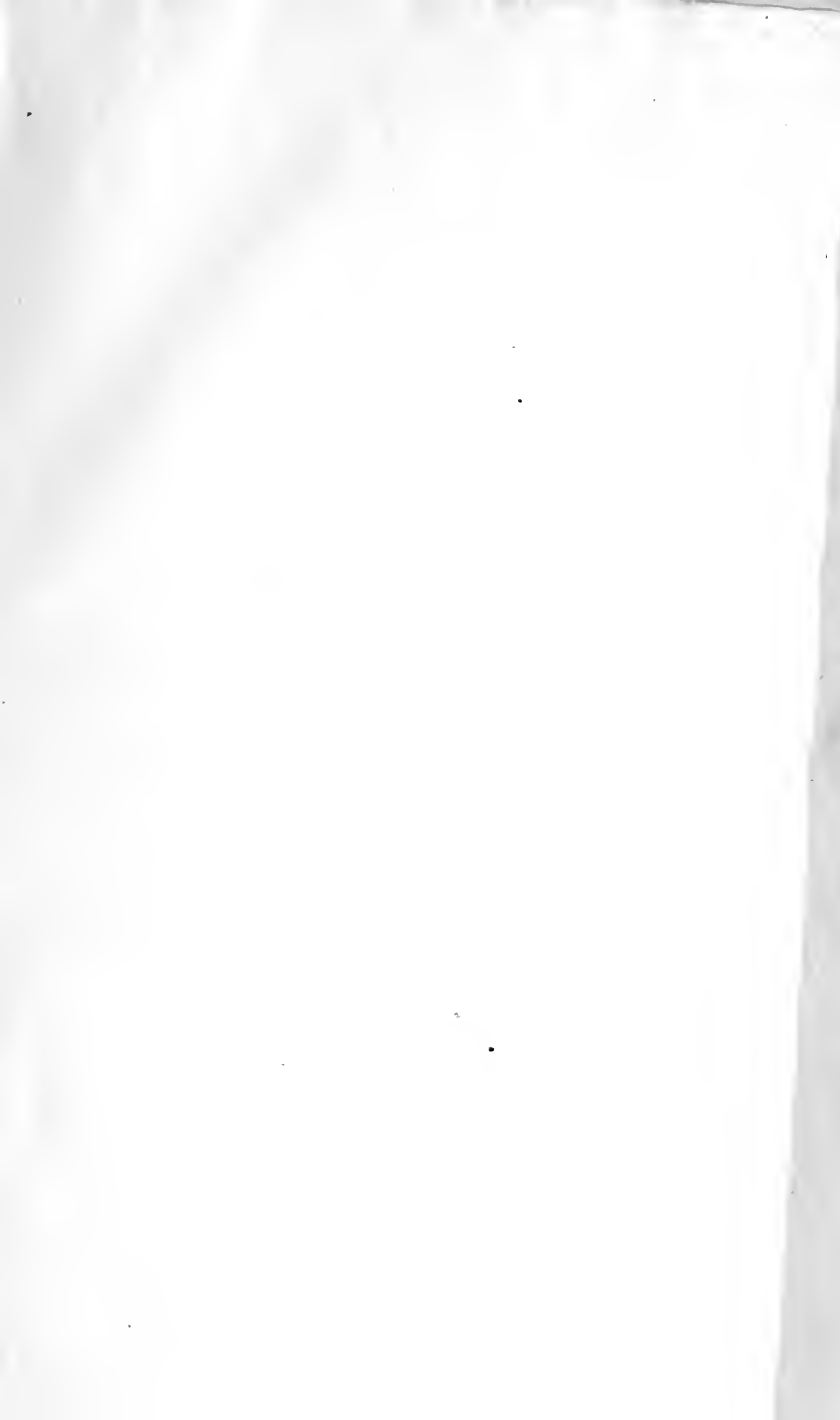
That after the said limitation shall take effect as aforesaid, Judges' Commissions be made *Quamdiu se bene gesserint*, and their salaries ascertained, and established ; but upon the

Address of both Houses of Parliament it may be lawful to remove them.

That no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament.

IV. And whereas the Laws of England are the birthright of the people thereof, and all the Kings and Queens, who shall ascend the Throne of this realm, ought to administer the Government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: The said Lords Spiritual and Temporal, and Commons, do therefore further humbly pray, That all the Laws and Statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other Laws and Statutes of the same now in force, may be ratified and confirmed, and the same are by his Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, and by the authority of the same, ratified and confirmed accordingly.





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